MISSISSIPPI CODE 1972

Annotated

Municipalities

Title 21

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VOLUME 6

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MISSISSIPPI CODE

1972

ANNOTATED

ADOPTED AS THE OFFICIAL CODE OF THE
STATE OF MISSISSIPPI
BY THE
1972 SESSION OF THE LEGISLATURE

VOLUME SIX

MUNICIPALITIES

§§ 21-1-1 to 21-47-5

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
TO THE END OF THE 2015 REGULAR LEGISLATIVE SESSION

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PREFACE

The Mississippi Code of 1972, which became effective on November 1, 1973, is the culmination of nearly four years of effort on the part of the Legislature, the Attorney General's office and the publishers, which brings together provisions of general statutory law having a common subject matter into a more orderly and logical framework of code titles and chapters, and employing a modern and effective section numbering system. A major by-product of the code revision will be the state-owned magnetic computer tape containing the Mississippi Code of 1972, which will be of invaluable assistance to the Legislature and to the state.

The enabling act for the code was a recommendation of the Mississippi State Bar, which resulted in the consideration and passage of Senate Bill 1964, Chapter 465, Laws of 1970, signed into law by Governor John Bell Williams.

The Code Committee provided for in that act was comprised of A. F. Summer, Attorney General, Heber Ladner, Secretary of State, Representative Edgar J. Stephens, Jr., Chairman, House Appropriations Committee, Senator William G. Burgin, Jr., Chairman, Senate Appropriations Committee, Representative H. L. Meredith, Jr., Chairman, House Judiciary "A" and Judiciary en banc Committees, Senator E. K. Collins, Chairman, Senate Judiciary "A" and Judiciary en banc Committees, Representative Ney McKinley Gore, Jr., Chairman, House Judiciary "B" Committee, and Senator William E. Alexander, Chairman, Senate Judiciary "B" Committee. In 1972, Representative Marby Robert Penton and Senator Herman B. Decell, Chairman of House and Senate Judiciary "B" Committees, respectively, became members of the Committee, replacing Representative Gore and Senator Collins, Senator Alexander having been appointed Chairman of Senate Judiciary "A" and Judiciary en banc Committees. The Deputy Attorney General, Delos H. Burks, served the Code Committee as Secretary. Special Assistant Attorney General Fred J. Lotterhos, under the supervision of the Attorney General, was assigned the principal responsibility for the supervision of the recodification, including the consideration and treatment of some 16,000 sections of code manuscript.

Final legislative approval was given to the Mississippi Code of 1972 by passage of Senate Bill 2034, Laws of 1972, which was signed by Governor William L. Waller on April 26, 1972.

The Code Committee is of the opinion that the recodification has been thoroughly and well accomplished, and will result in a greatly improved repository of the general statutory law of the state.

A. F. Summer
Attorney General

PUBLISHER'S FOREWORD

This 2015 Replacement Volume 6 of the Mississippi Code of 1972 Annotated represents material appearing in the original 1973 bound volume, the 1990 Replacement Volume 6, the 2001 Replacement Volume 6, and the 2007 Replacement Volume 6, as well as reflecting amendments, repeals, and new Code provisions enacted by the Mississippi Legislature through the 2015 Regular Legislative Session.

This volume contains the text of Title 21, of the Mississippi Code of 1972 Annotated, as amended through the 2015 Regular Legislative Session.

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Many of these cases were decided under the former statutes in effect prior to the enactment of the Code of 1972. These earlier cases have been moved to pertinent sections of the Code where they may be useful in interpreting the current statutes. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 2nd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series:
American Law Reports, Federal Series:
Mississippi College Law Review:
Mississippi Law Journal:

Finally, published Opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

A comprehensive Index appears at the end of this volume.

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PUBLISHER'S FOREWORD

For further information or assistance, please call us toll-free at (800) 833-9844, fax us toll-free at (800) 643-1280, e-mail us at customer.support@bender.com, or write to: Mississippi Code Editor, LexisNexis, 701 E. Water St, Charlottesville, VA 22902-5389.

September 2015 LexisNexis

User's Guide

This guide is designed to help both the lawyer and the layperson get the most out of the Mississippi Code of 1972 Annotated. Information about key features of the Code and suggestions for its more effective use are given under the following headings:

— Advance Code Service
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— Analyses
— Attorney General Opinions
— Code Status
— Comparable Legislation from other States
— Court Rules
— Cross References
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— Tables

If you have a question not addressed by the User's Guide, or comments about your Code service, you may contact us by calling us toll-free at (800) 833-9844, faxing us toll-free at (800) 643-1280, e-mailing us at customer.support@bender.com, or writing to Mississippi Code Editor, LexisNexis, 701 E Water Street, Charlottesville, VA 22902-5389.

ADVANCE CODE SERVICE

Three times a year, at roughly quarterly intervals between delivery of Code supplement pocket parts, we publish the Mississippi Advance Code Service pamphlets. These pamphlets contain updated statutory material and annotations to Attorney General opinions, research and practice references, and recent court decisions construing the Code. Each pamphlet is cumulative, so that each is a "one-stop" source of case notes updating those in your Code bound volumes and pocket parts.

ADVANCE SHEETS

The Advance Sheets consist of a series of pamphlets issued in the spring. The series reproduces the acts passed by the Mississippi Legislature and approved by the Governor during the legislative session. Features include tables showing the impact of legislation on sections of the Mississippi Code of 1972 Annotated, and a cumulative index. These pamphlets enable the user to receive a preview of approved legislation prior to supplement availability, and serve as an excellent source of legislative history.

AMENDMENT NOTES

Every time a Code provision is amended, we prepare a note describing the effect of the amendment. By reading the note, you can ascertain the impact of the change without having to check the former statute itself.

Amendment notes are retained in the Supplement until the bound volume is replaced, at which time notes from all but the last two years are deleted.

Amendment notes are available online from 1991 until the present in the Mississippi Legislative Archive.

ANALYSES

Each title, chapter, and article appearing in a bound volume or supplement is preceded by an analysis. The analysis details the scope of the title, chapter, and article and enables you to see at a glance the content of the title, chapter, and article without resorting to a page-by-page examination in the bound volume or supplement.

ATTORNEY GENERAL OPINIONS

Opinions of the Attorney General for the State of Mississippi have been read for constructions of Mississippi law. Notes describing the subject matter of the opinions have been placed under relevant Code provisions under the heading “Attorney General Opinions.” The citation at the end of each note refers to the person requesting the opinion, the date of the opinion, and the opinion number.

CODE STATUS

The Mississippi Code of 1972 Annotated is Mississippi's official code and is considered evidence of the statute law of the State of Mississippi (see § 1-1-8). The Code was enacted by Chapter 394 of the Laws of 1972, which was signed by the Governor on April 26, 1972.

Title 1, Chapters 1 through 5 of the Code contain statutes governing the status and construction of the Code.

COMPARABLE LEGISLATION FROM OTHER STATES

Notes to comparable legislation from other states appear for uniform laws, interstate compacts, statutory provisions pertaining to reciprocity and cooperation with other states, and various important statutes of general interest. Other states' statutes that are similar in subject matter and scope to those of Mississippi are cited, generally, under the first section of the chapter or article to which they pertain. Occasionally, comparable legislation pertains to only one section, in which case it is cited under that section rather than at the chapter or article level.

See also *Federal Aspects.*

COURT RULES

The Mississippi Court Rules are published separately by LexisNexis in a fully annotated softcover volume which is replaced annually and supplemented semi-annually.

The Court Rules volume contains statewide rules of procedure of the state courts, the local rules of the United States district courts and bankruptcy courts for Mississippi, and the rules of the United States Court of Appeals for the Fifth Circuit. Rules are received from the courts and edited only for stylistic consistency. For further information, see the Preface to the Mississippi Court Rules volume.

CROSS REFERENCES

Cross references refer you to notes under other Code sections, that may affect a law or place it in context. Cross references also are used under repealed provisions to refer you to an existing law on a similar subject. Cross references do not cite all related statutes, however, since these can be identified by using the General Index.

See also *Comparable Legislation from other States* and *Federal Aspects.*

EDITOR'S NOTES

Editor's notes are notes prepared by the Publisher that contain information about important or unusual features of a law, or special circumstances surrounding passage of the law, that are not apparent from the law's text.

See also *Effective Dates.*

EFFECTIVE DATES

Absent a specific effective date provision within an act, Mississippi laws generally take effect upon approval date, which is the date the act is signed into law by the Governor.

FEDERAL ASPECTS

Notes to federal legislation that is similar in subject matter and scope to the laws of Mississippi are referenced throughout the Code. In addition, the

Code contains the United States Code Service citation for any federal law that is referred to in a Mississippi statute by its popular name or by its session law designation.

See also *Comparable Legislation from other States*.

INDEX

The Code is completely indexed in two softcover Index volumes, which are updated and replaced annually. In addition, each volume of the Code is followed by its own index. As accurate and thorough as the Index is, your best defense against index wild goose chases is familiarity with indexing techniques. To that end, an explanatory Foreword to the Index appears in the first Index volume.

JOINT LEGISLATIVE COMMITTEE NOTES

Joint Legislative Committee notes are included in the Code to describe codification decisions made by the Mississippi Joint Legislative Committee on Compilation, Revision and Publication of Legislation. Examples of Committee actions that warrant the inclusion of a note are the integration of multiple amendments to a single Code section during the same legislative session, and the correction of typographical errors appearing in the Code.

JUDICIAL DECISIONS

Every reported case from the Supreme Court of Mississippi, the Court of Appeals of Mississippi, federal district courts for Mississippi, the federal Fifth Circuit Court of Appeals and the United States Supreme Court has been read for constructions of Mississippi law. These constructions are noted under pertinent sections of the statutes or Mississippi Constitution provisions, under the heading "Judicial Decisions." Where a decision has been reviewed by a higher court, subsequent judicial history and disposition is noted in the case note if such disposition has any bearing on the annotated material. Where two or more decisions state the same rule of law, the case citations are cumulated under one case note.

Case notes are grouped together under headings called "catchlines." The catchlines identify the basic subject matter of the case notes and assist the user in locating pertinent notes. Catchlines are numbered and arranged thematically, with "In general" first. Where there are two or more catchlines, an analysis, listing all the catchlines, precedes the annotations.

Frequently, statutes carry notes to cases that arose under earlier laws on the same subject. Case notes are retained so long as the editor believes the note will have some relevance under current law, though of course the relevance may be diminished by later changes in the law. These case notes appear under the heading "Decisions under former law."

ORGANIZATION AND NUMBERING SYSTEM

The Code is organized by titles, chapters, articles, subarticles, undesignated centered headings and sections. Analyses at the beginning of each title, chapter, article, and subarticle help you understand the internal arrangement of each Code unit (see *Analyses*).

Odd numbers are generally used for the numbering of titles, chapters and sections. Even numbers have been used for some chapters and sections so that a particular new chapter or section might be logically placed with other chapters and sections dealing with the same or similar subject matter. Similarly, the use of numbers with decimal points has been used for some sections in order that they may be inserted among other sections pertaining to the same subject.

The title, chapter, and section for each Code section is revealed by its section number. Thus, in the designation "§ 1-3-65," the first digit ("1") means the provision is in Title 1 ("Laws and Statutes"); the second ("3") indicates Chapter 3 ("Construction of Statutes"); and the last two digits ("65") mean the 65th section in that chapter ("Construction of terms generally").

Articles and subarticles are not reflected by section number designations.

Within sections, subsections and paragraphs usually are designated following this pattern: (1)(a)(i)1. or (1)(a)(i)A. A distinctive indention scheme is applied to suggest the relative value of each unit within this hierarchy.

PLACEMENT OF NOTES

Where a note pertains to a single statute section, it will of course be set out following that section. In many instances, however, a note applies equally to several statute sections or to an entire chapter or article. If the pertinent sections are scattered, or few in number, the note will be duplicated for each section. But where the note applies to all or most of the sections in a chapter or article, we prevent the space-consuming repetition of notes by placing the note at the very beginning of the chapter or article.

REPLACEMENT VOLUMES

The Code is periodically updated and streamlined by the replacement of volumes. Although a current set of the Code contains all currently applicable statutes, we encourage you to retain replaced volumes and their supplement pockets parts for historical reference.

RESEARCH AND PRACTICE REFERENCES

Citations to references in American Jurisprudence, American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts, American Jurisprudence Trials, American Law Reports, First through Sixth Series, ALR Federal, Corpus Juris Secundum, various other treatises and practice guides, and Mississippi law journals are given under this heading, wherever the references appear to discuss the statute under which the citation appears, or a topic related to the statute. These citations are intended only to give you a starting point for your library research. The Mississippi law journals include Mississippi Law Journal and Mississippi College Law Review.

SOURCE NOTES

Each section of the Code is followed by a brief note showing the acts of the Legislature on which it is based, including the act that originally enacted the section and any subsequent amendments.

The source note follows the section text, preceding any other annotations for the section. Information in the source note is listed in chronological order, with the most recent information listed last. If a section has been renumbered, the former number will appear in the source note.

The tables volume should also be consulted when researching the history of a statutory section, since it contains cross reference tables that provide a statutory citation for each section of the session laws and the date each act went into effect.

STATUTE HEADINGS

Headings or "catchlines" for Code sections and subsections are generally created and maintained by the publisher. They are mere catchwords and are not to be deemed or taken as the official title of a section or as a part of the section. Your suggestions for the improvement of particular catchlines are invited.

TABLES

The Mississippi Code of 1972 Annotated contains several tables that can assist you in your research. These are published in the Statutory Tables volume of the Code, and include the following:

- Sections of the Code of 1930 carried into the Code of 1942.
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- Allocation of Acts of Legislature, 1931 — 1972.
- Allocation of Acts of Legislature, 1972 — present.
- Consolidated Tables of amendments and repeals of 1942 Code sections.
- Consolidated Tables of amendments and repeals of 1972 Code sections.

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§ 21-1-1. Classification of municipalities.

The municipal corporations existing in this state are divided into three classes, to wit: cities, towns and villages. Those having two thousand inhabitants or more shall be classed as cities; those having less than two thousand and not less than three hundred inhabitants shall be classed as towns; and those having less than three hundred and not less than one hundred inhabitants shall be classed as villages. No municipal corporation shall be created hereafter except those classed as cities or towns. However, a municipality may be created in an area embracing not less than one square mile wherein there is then in existence or under construction not less than one mile of improved hard surface streets, with a total of not less than six streets making up said one mile of hard surface streets and there then exists or is under construction a public utilities system which shall include a waterworks system or sewerage system, or both. Nothing herein shall affect the status of any municipal corporation heretofore created and now existing, and all such municipal corporations, including villages, shall continue to exist as such with all the rights and privileges thereof.

SOURCES: Codes, 1892, § 2911; 1906, § 3299; Hemingway's 1917, § 5795; 1930, § 2369; 1942 § 3374-01; Laws, 1900, ch. 70; Laws, 1950, ch. 491, § 1; Laws, 1964, ch. 494, eff from and after passage (approved June 6, 1964).

Cross References — Constitutional authority for laws providing for city charters and their amendment, see Miss. Const. Art. 4, § 88.

Municipalities being classified according to the federal census, see § 21-1-3.

Judicial notice of municipality's classification, see § 21-1-11.

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Creation of civil service system in certain municipalities and details thereof, see §§ 21-31-1 et seq.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

The chancellor cannot pass upon question of public convenience and necessity of enlargement of municipality, inasmuch as that is a legislative question for municipal board in adopting the extension ordinance. Ritchie v. City of Brookhaven, 217 Miss. 876, 65 So. 2d 832 (1953).

Where a petition for adoption of city ordinance seeking enlargement of municipal boundaries literally complied with the statute, it was not necessary to allege in the petition that the ordinance was published as required by law. Ritchie v. City of Brookhaven, 217 Miss. 876, 65 So. 2d 832 (1953).

Question of reasonableness of enlargement of municipality is a judicial question and determination is a proper exercise of judicial function. Ritchie v. City of Brookhaven, 217 Miss. 876, 65 So. 2d 832 (1953).

City ordinance which sets forth the improvements to be made in the annexed territory, describing them in general terms, and providing that they would be made when necessary and economically feasible, sufficiently complied with statutory requirement that ordinance shall in general terms describe improvements to be made in manner and extent thereof. Ritchie v. City of Brookhaven, 217 Miss. 876, 65 So. 2d 832 (1953).

2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

A Mississippi municipality acting under the commission form of government has all the powers possessed by other municipalities, except as otherwise provided by statute. Independent Paving Co. v. City of Bay St. Louis, 74 F.2d 961 (5th Cir. 1935).

Where a municipality comes under the operation of this chapter, all of its powers under its original charter cease except such as are kept alive by the provisions of this chapter. Harris v. City of Water Valley, 78 Miss. 659, 29 So. 401 (1901).

The manifest purpose of this chapter was that all municipalities should come under it and thus have uniformity in the charter powers of municipalities according to their several classes, but the right of election was given the municipalities then existing not to come under the provisions of the chapter by resolution of corporate authority to be certified to the secretary of state. Resolution without certification as directed is insufficient. State v. Govan, 70 Miss. 535, 12 So. 959 (1893).

When a statute primarily refers to matters foreign to the ordinary functions of public corporations and imposes burdens or liabilities on persons without any corresponding benefits, the word "persons" will not be held to embrace municipal corporations exercising a part of the state's sovereignty. Dollman v. Moore, 70 Miss. 267, 12 So. 23 (1892).

Where a municipality against which as garnishee, a decree has been rendered in an attachment suit against a non-resident, fails to object to the garnishment, the objection not being jurisdictional cannot be made by the defendant in attachment on appeal. Dollman v. Moore, 70 Miss. 267, 12 So. 23 (1892).

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 26 et seq.; 51, 52 et seq.; 91-104.

13A Am. Jur. Legal Forms 2d, Forms 180:11 et seq. (Charters, generally).

CJS. 62 C.J.S., Municipal Corporations §§ 15, 16 et seq.; 57 et seq.

§ 21-1-3. Change of classification according to federal census.

Whenever a census taken under an act of Congress shall show that the population of a city, town or village has increased or diminished so as to take or place such city, town or village out of the class to which it theretofore has belonged, the governing authorities of the municipality shall enter an order on the minutes thereof reciting such fact and adjudging the proper class of such municipality according to such census, and shall forward a certified copy of such order to the secretary of state, who shall file same with the other records pertaining to such municipality and keep same as a permanent record. Thereafter, such municipality shall be classed according to the population shown by such census, and such census shall be conclusive on the question of such classification.

SOURCES: Codes, 1892, § 2917; 1906, § 3308; Hemingway's 1917, § 5804; 1930, § 2379; 1942, § 3374-26; Laws, 1896, ch. 166; Laws, 1950, ch. 491, § 26, eff from and after July 1, 1950.

Cross References — Classification of municipalities, see § 21-1-1.
Judicial notice of municipality's classification, see § 21-1-11.

RESEARCH REFERENCES

ALR. Propriety of using census data as basis for governmental regulations or activities — state cases. 56 A.L.R.5th 171.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 109.

18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, etc., Form 32 (petition for advancement of city or town to higher classification).

§ 21-1-5. Corporate names.

The corporate name of a city shall be "The City of ________." The corporate name of a town shall be "The town of ________." The corporate name of a village shall be "The village of ________." In each case the blank shall be filled in with the name by which such municipality has been legally designated.

SOURCES: Codes, 1892, § 2912; 1906, § 3300; Hemingway's 1917, § 5796; 1930, § 2370; 1942, § 3374-02; Laws, 1938, ch. 335; Laws, 1950, ch. 491, § 2.

Cross References — Suits by and against municipality, see §§ 11-45-1 et seq.
Changing corporate name of municipality, see § 21-1-7.

JUDICIAL DECISIONS

1. In general.

A municipal corporation cannot enjoin the use of its name for designating another place and the inconveniences resulting to its citizens therefrom do not give it a right to complain. Gulf & S.I.R.R. v. Town of Seminary, 81 Miss. 237, 32 So. 953 (1902).

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Corporations, § 26.

CJS. 62 C.J.S., Municipal Corporations § 19.

§ 21-1-7. Changing corporate name.

The mayor and board of aldermen or municipal authorities may change the name of any municipality by preparing in writing the proposed change and having same published for three weeks in a newspaper published in such municipality, if there be one, and, if none, then by posting for said time in at least three public places therein, after which the proposed change shall be submitted to the governor for his approval. If, after publication is made, one-tenth of the qualified electors of the municipality shall within ten days after the completion of such publication protest against the proposed change, the governor shall not approve same until it shall be submitted to and ratified by a majority of the qualified electors of the municipality. When approved by the governor, the same shall be recorded in the office of the secretary of state and upon the record of the municipal governing authorities.

SOURCES: Codes, 1906, § 3445; Hemingway's 1917, § 6005; 1930, § 2615; 1942, § 3374-30; Laws, 1950, ch. 491, § 30, eff from and after July 1, 1950.

Cross References — Prescribed corporate names of municipalities, see § 21-1-5.

ATTORNEY GENERAL OPINIONS

The provisions of §§ 9-5-131, 9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, only mandate the use of tax assessment rolls and the avails to be collected from levies thereon in calculating the amount of the bonds therein required. Bryant, January 29, 1999, A.G. Op. #99-0011.

The calculation of a bond pursuant to §§ 9-5-131, 9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, includes all assessment rolls upon which a board of supervisors may levy ad valorem taxes. Bryant, January 29, 1999, A.G. Op. #99-0011.

The calculation pursuant to §§ 9-5-131, 9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, includes all ad valorem tax levies listed on the certified levy sheet, including school district levies. Bryant, January 29, 1999, A.G. Op. #99-0011.

The calculation pursuant to §§ 9-5-131, 9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, includes all classes of property upon which ad valorem taxes are levied and collected. Bryant, January 29, 1999, A.G. Op. #99-0011.

In calculating the amount of a bond pursuant to §§ 9-5-131, 9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, the total amount of ad valorem taxes to be collected, rather than the actual amount collected, must be used. Bryant, January 29, 1999, A.G. Op. #99-0011.

§ 21-1-9. Designation of municipalities.

All municipalities operating under Chapter 99, Mississippi Code of 1906, and all municipalities operating under Title 21, Chapter 3, Mississippi Code of 1972, shall be designated as having "Code Charters." All municipalities operating under Title 21, Chapter 5, Mississippi Code of 1972, shall be designated as having "Commission Form of Government." All municipalities operating under Title 21, Chapter 7, Mississippi Code of 1972, shall be designated as having "Council Form of Government." All municipalities operating under Title 21, Chapter 9, Mississippi Code of 1972, shall be designated as having "Council-Manager Form of Government." All other municipalities shall be designated as having "Private Charters," or such other form of government as may be created by the legislature, such cities to be designated by the act creating such special form of government.

SOURCES: Codes, 1906, ch. 99; 1942, § 3374-31; Laws, 1950, ch. 491, § 31, eff from and after July 1, 1950.

Cross References — Changing corporate name of municipality, see § 21-1-7.

JUDICIAL DECISIONS

1. In general.

City was authorized under statutory law to operate under a special charter, and, thus, the mayor was not authorized to vote regarding the city council's appointment of a particular person as a city attorney; the city attorney was not a municipal officer under the city's special charter and the mayor was thus only authorized to vote on such an issue if the city council had a tie vote, which did not occur since the city council voted in favor of the person's appointment. Tisdale v. City Council of Aberdeen, 856 So. 2d 323 (Miss. 2003).

The municipal charter should be so construed as to carry out the legislative intent, and effect if possible must be given to every part thereof. City of Greenville v. Laurent, 75 Miss. 456, 23 So. 185 (1898).

§ 21-1-11. Judicial notice to be taken of class and powers of municipality.

The courts shall take judicial notice of the class to which each of the municipalities of the state belongs, and of its powers under the provisions of this title.

SOURCES: Codes, 1892, § 3038; 1906, § 3443; Hemingway's 1917, § 6003; 1930, § 2614; 1942, § 3374-29; Laws, 1950, ch. 491, § 29, eff from and after July 1, 1950.

Cross References — Classification of municipalities, see § 21-1-1.
General powers of municipality, see § 21-17-1.

INCORPORATION

Sec.	
21-1-13.	Preparing and filing of petition.
21-1-15.	Publication of notice of proposed incorporation.
21-1-17.	Hearing on petition; decree.
21-1-19.	Costs.
21-1-21.	Appeal.
21-1-23.	Copy of decree sent to Secretary of State.

21-1-25. Commissioning of officers; first meeting.

§ 21-1-13. Preparing and filing of petition.

Whenever the inhabitants of any unincorporated territory shall desire to incorporate such territory as a city or town, they shall prepare a petition and file same in the chancery court of the county in which such territory is located or, if the territory is located in more than one county, the chancery court of either county. Said petition shall meet the following requirements:

(1) it shall describe accurately the metes and bounds of the territory proposed to be incorporated and there shall be attached to such petition a map or plat of the boundaries of the proposed municipality;

(2) it shall set forth the corporate name which is desired;

(3) it shall be signed by at least two-thirds of the qualified electors residing in the territory proposed to be incorporated;

(4) it shall set forth the number of inhabitants of such territory;

(5) it shall set forth the assessed valuation of the real property in such territory according to the latest available assessments thereof;

(6) it shall state the aims of the petitioners in seeking said incorporation, and shall set forth the municipal and public services which said municipal corporation proposes to render and the reasons why the public convenience and necessity would be served by the creation of such municipal corporation;

(7) it shall contain a statement of the names of the persons the petitioners desire appointed as officers of such municipality; and

(8) it shall be sworn to by one or more of the petitioners.

When such a petition shall be filed, it shall be docketed as are other suits and causes in the chancery courts of this state.

SOURCES: Codes, 1892, §§ 2921, 2922; 1906, §§ 3312, 3313; Hemingway's 1917, §§ 5809, 5810; 1930, §§ 2388, 2390; 1942, § 3374-03; Laws, 1898, ch. 74; Laws, 1908, ch. 74; Laws, 1914, ch. 244; Laws, 1950, ch. 491, § 3, eff from and after July 1, 1950.

Cross References — Judicial definitions and illustrations generally, see §§ 1-3-1 et seq.

Prescribed corporate names of municipalities, see § 21-1-5.

Amending existing municipal charter, see § 21-17-9.

Filing of real property assessment rolls, see § 21-33-23.

JUDICIAL DECISIONS

1. In general.
2. Sufficiency of petition.
3. Sufficiency of signatures.

1. In general.

Section 21-1-33, rather than § 21-1-13, is a controlling statute where a petition is filed to confirm the annexation of territory to a municipality. McElhaney v. City of Horn Lake, 501 So. 2d 401 (Miss. 1987).

Some factors to be considered in determining whether public convenience and necessity require incorporation are: the governmental services presently provided; the quality and adequacy of all services provided; the services expected from other sources; the impairment of an immediate vested right in an adjoining city; the substantial or obvious need justifying incorporation. City of Pascagoula v. Scheffler, 487 So. 2d 196 (Miss. 1986).

The determination as to whether the incorporation of a new municipality is reasonable is for the trial court. City of Pascagoula v. Scheffler, 487 So. 2d 196 (Miss. 1986).

The requirements for a petition to incorporate are not necessarily the same as the requirements for an ordinance extending the boundaries of an existing municipality, the legislature having dealt with the two situations in separate statutes. Boling v. City of Jackson, 258 So. 2d 443 (Miss. 1972).

2. Sufficiency of petition.

Failure of incorporators to include page three when they filed a first petition for incorporation was a clerical error and not a failure to comply with the specific requirements of Miss. Code Ann. § 21-1-13; incorporation pleadings were amendable pursuant to Miss. R. Civ. P. 15. City of Jackson v. Byram Incorporators, 16 So. 3d 662 (Miss. 2009).

Petitioners for incorporation were in substantial compliance in showing the assessed valuation of real property in the area sought to be incorporated, and contradiction between the pleading, showing an assessment of $17,755,488, and the proof, showing $13,362,275 assessed valuation, was decided by the chancellor who was not in manifest error. City of Pascagoula v. Scheffler, 487 So. 2d 196 (Miss. 1986).

Mississippi Code § 21-9-15(2) was inapplicable to render defective a petition seeking to establish in Jackson County a new municipality, with a form of government consisting of a mayor and five council members. City of Pascagoula v. Scheffler, 487 So. 2d 196 (Miss. 1986).

Petitioners for municipal incorporation have burden of proving the sufficiency of their petition. Boling v. City of Jackson, 279 So. 2d 590 (Miss. 1973); City of Pascagoula v. Scheffler, 487 So. 2d 196 (Miss. 1986).

A petition for incorporation which stated, inter alia, that such incorporation would permit the providing of fire and police protection, that the proposed municipal corporation would enact ordinances to correct health problems created by inferior sewer systems, that other ordinances would be enacted relating to electrical standards, plumbing standards, and building code standards, and that improved sanitation and garbage disposal within the incorporated territory would be provided, fully met the requirement of the statute that the petition set forth the municipal and public services which the municipal corporation proposed to render. Boling v. City of Jackson, 258 So. 2d 443 (Miss. 1972).

A petition by qualified electors for incorporation of a new municipality failed to comply with the requirements of the statute and would be dismissed where it consisted of a so-called extended petition containing the required allegations, and numerous so-called short petitions which the extended petition undertook to incorporate and which, while they contained the signatures of an alleged two-thirds of the territory's qualified electors, failed to comply with other statutory requirements such as setting forth the number of inhabitants of the territory, stating with reasonable definiteness the petitioners' aims in seeking incorporation, and describing the territory to be incorporated in metes and bounds. City of Jackson v. Boling, 241 So. 2d 359 (Miss. 1970).

3. Sufficiency of signatures.

In determining the number of qualified electors in area sought to be incorporated to ascertain that requisite percentage thereof have signed petition, resort to registration and poll books is permissible but, since these records require updating to reflect changes, resort to other sources to supplement them is not impermissible. City of Pascagoula v. Scheffler, 487 So. 2d 196 (Miss. 1986).

In determining whether two thirds of the qualified electors were in favor of a proposed incorporation, the chancellor should have considered the fact that a number of the signers of the original petition had asked to have their names withdrawn; one can withdraw from a petition at any time prior to the determination of the hearing. Myrick v. Incorporation of a Designated Area into Mun. Corp. to be

Named Stringer, 336 So. 2d 209 (Miss. 1976).

In seeking the incorporation as a municipality of an unincorporated area, it is essential under subdivision (3) that the petition be signed by at least two-thirds of the qualified electors residing in the territory proposed to be incorporated, and where the original petition contains less than the required number of petitioners, this defect cannot be remedied by amendments thereafter filed including the names of additional petitioners. Bridges v. City of Biloxi, 250 Miss. 717, 168 So. 2d 40 (1964).

The testimony of an attorney for the respondent that he had investigated all of the pertinent records necessary to determine whether the required number of qualified electors as provided in subdivision (3) of this section [Code 1942, § 3374-03] had signed a petition for the incorporation of a theretofore unincorporated area was admissible, where the records themselves were available to opposing counsel and the attorney was also available for cross-examination. Bridges v. City of Biloxi, 250 Miss. 717, 168 So. 2d 40 (1964).

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 25, 26, 27.

CJS. 62 C.J.S., Municipal Corporations §§ 34-37.

Law Reviews. 1979 Mississippi Supreme Court Review: Miscellaneous. 50 Miss. L. J. 833, December 1979.

§ 21-1-15. Publication of notice of proposed incorporation.

After the filing of said petition, and upon request therefor by the petitioners, the chancellor shall set a day certain, either in term time or in vacation, for the hearing of such petition and notice shall be given to all persons interested in, affected by, or having objections to the proposed incorporation, that the hearing on the petition will be held on the day fixed by the chancellor and that all such persons will have the right to appear and enter their objections, if any, to the proposed incorporation. The said notice shall be given by publication thereof in some newspaper published or having a general circulation in the territory proposed to be incorporated once each week for three consecutive weeks, and by posting a copy of such notice in three or more public places in such territory. The first publication of such notice and the posted notice shall be made at least thirty days prior to the day fixed for the hearing of said petition, and such notice shall contain a full description of the territory proposed to be incorporated. However, if any of the territory proposed to be incorporated is located within three miles of the boundaries of an existing municipality, then such existing municipality shall be made a party defendant to such petition and shall be served with process in the manner provided by law, which process shall be served at least thirty days prior to the date set for the hearing.

SOURCES: Codes, 1942, § 3374-04; Laws, 1950, ch. 491, § 4, eff from and after July 1, 1950.

Cross References — Publication of notice of proposed enlargement or contraction of corporate boundaries, see § 21-1-31.

Application of this section to the giving of notice of referendum on the question of inclusion in municipal school district, see § 21-1-59.

Methods of publishing notice of special improvement, see § 21-41-51.

JUDICIAL DECISIONS

1. In general.
2. Construction.

1. In general.

Circuit Court properly granted summary judgment in favor of a city because a lessee was not entitled to compensation where the city notified the lessee that it could no longer sell fireworks on newly annexed land, the regulation of fireworks sales was considered a police power, and the pre-existing-use doctrine and/or grandfathering was not applicable to ordinances relating to police powers, and the regulation of fireworks sales was considered a police power. Pearson's Fireworks, Inc. v. City of Hattiesburg, — So. 3d —, 2014 Miss. LEXIS 391 (Miss. Aug. 7, 2014).

Objectors to the annexation contended that the city failed to prove that adequate notice was given. However, in the affidavit filed by the city, the affiant specifically stated the exact locations and dates of his postings of notice of the hearings in his affidavit as required by Miss. R. Civ. P. 4(f) and Miss. Code Ann. § 21-1-15 and Miss. Code Ann. § 21-1-31; the chancellor did not commit manifest error by allowing the detailed affidavit to constitute adequate proof of notice. Weeks v. City of Clinton (In re City of Clinton), 920 So. 2d 452 (Miss. 2006).

Town's late filing of proof of publication of hearing into proposed annexation was not fatal to chancery court's approval of annexation. Burch v. Town of Mantachi, 685 So. 2d 724 (Miss. 1996).

Since notice to a nearby existing municipality is statutorily required before incorporation, and statute further provides that all persons interested in, affected by, or objecting to an incorporation, shall be noticed, city of Pascagoula was a "person" entitled to object to all facets of a hearing to incorporate a nearby unincorporated area. City of Pascagoula v. Scheffler, 487 So. 2d 196 (Miss. 1986).

Proper notice was not posted in the territory annexed, as required by § 21-1-15, where notice was posted only within the already existing corporate boundaries of the municipality that initiated the annexation process, and not within the territory sought to be annexed, notwithstanding assertions that notice was posted in three public places within the existing municipality, and that there were no public places located within the territory to be annexed other than a public school, which was in vacation when the notices were posted. Wiley v. Corporate Boundaries, 441 So. 2d 116 (Miss. 1983).

In an action to confirm a city's proposed annexation of territory, the returns of the deputy sheriff who posted the notices thereof were sufficient to comply with the statute regarding proof of posting of notice, even though there was no affidavit attesting to the posting. Nowlin v. City of Pearl, 365 So. 2d 952 (Miss. 1978), cert. denied, 441 U.S. 946, 99 S. Ct. 2167, 60 L. Ed. 2d 1049 (1979).

Notice requirements of this statute, being in lieu of personal service and thus necessitating strict compliance, were not shown to have been met where there was no affidavit or attempted other proof that notices had been posted, and provisions of § 13-1-145 [Repealed] that, when posting of notice is required, such may be proved by affidavit, was thus not satisfied; since notice requirements of § 21-1-15 are mandatory and jurisdictional, failure to comply required dismissal of petition for incorporation. Myrick v. Incorporation of a Designated Area into Mun. Corp. to be Named Stringer, 336 So. 2d 209 (Miss. 1976).

Where the statutes providing for a hearing on a petition to create a municipal corporation, and to objections to such petition, extend the right to objectors to personally appear at the hearing on the merits and to present their objections orally, the published notice of the hearing could not limit such right. Boling v. City of Jackson, 258 So. 2d 443 (Miss. 1972).

2. Construction.

Addition of two parties in a revised petition for incorporation did not render the petition jurisdictionally fatal, pursuant to Miss. Code Ann. § 21-1-15 because Miss. R. Civ. P. 21 applied to petitions of incorporation where the parties had received timely service of process and neither party objected to the proposed incorporation. City of Jackson v. Byram Incorporators, 16 So. 3d 662 (Miss. 2009).

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

Am Jur. 18A Am. Jur. Pl & Pr Forms (Rev), Notice, Form 1 (notice, general form).

18A Am. Jur. Pl & Pr Forms (Rev), Notice, Forms, 21 et seq. (affidavit of service of notice by posting or publication).

CJS. 62 C.J.S., Municipal Corporations § 38.

Law Reviews. 1978 Mississippi Supreme Court Review: Administrative Law. 50 Miss. L. J. 11, March 1979.

§ 21-1-17. Hearing on petition; decree.

At the time fixed, the chancellor shall proceed to hear all evidence offered in support of said petition, together with all objections, if any, that may be presented touching or bearing upon the question of whether or not the proposed incorporation is reasonable and is required by the public convenience and necessity. The chancellor shall have the power, however, to grant such reasonable continuances as justice may require. If the chancellor finds from the evidence that the proposed incorporation is reasonable and is required by the public convenience and necessity, then he shall enter a decree declaring such municipal corporation to be created as requested in such petition, which decree shall give an accurate description of the territory included in such municipal corporation, shall classify such municipal corporation according to law, and shall set forth the names of the persons which the petitioners desire as officers of such municipality. The chancellor shall have the power, however, in granting any such incorporation to grant same in whole or in part by modifying or decreasing the territory to be included within such municipal corporation. If the chancellor finds from the evidence that the proposed incorporation is not reasonable and is not required by the public necessity and convenience, then a decree shall be entered denying such incorporation. Whenever any municipal corporation shall be created as herein provided, a map or plat of the boundaries of such municipal corporation shall be filed with the chancery clerk and shall be recorded by him in the official plat book of the county. The decree of the chancellor, either creating or denying such incorporation, shall become effective after the passage of ten days from the date of such decree, unless an appeal be taken therefrom as is provided in Section 21-1-21.

SOURCES: Codes, 1942, § 3374-05; Laws, 1950, ch. 491, § 5, eff from and after July 1, 1950.

Cross References — Copy of decree approving municipal incorporation being sent to secretary of state, see § 21-1-23.

Appropriations to aid in the control and eradication of insect pests, rodents, fire ants and the like, see § 69-25-33.

Federal Aspects — Housing and Community Development Act of 1974 (Public Law 93-383) is codified as 42 USCS §§ 5301 et seq.

JUDICIAL DECISIONS

1. In general.

Supreme Court, in reviewing chancellor's findings about whether proposed municipal incorporation is required by considerations of public convenience and necessity and is reasonable, must merely determine whether the findings were supported by substantial credible evidence, and should reverse only if findings are manifestly in error. Incorporation of City of Oak Grove v. City of Hattiesburg, 684 So. 2d 1274 (Miss. 1996).

Substantial evidence regarding police protection, traffic control, sewage systems, fire service, and business owners' concerns supported chancellor's finding that considerations of public convenience and necessity did not require granting petition for municipal incorporation of semirural residential area that petitioners brought after nearby city unsuccessfully attempted to annex the area, especially considering that area was large and sparsely populated, that incorporation effort was largely defensive measure against annexation, and that chancellor's findings were consistent with findings made in prior proceeding concerning the annexation attempt. Incorporation of City of Oak Grove v. City of Hattiesburg, 684 So. 2d 1274 (Miss. 1996).

Size and population density of semirural residential area whose land mass measured 40 square miles but whose population was only around 10,000 citizens presented logistical problems of such enormity as to make it unreasonable to grant petition for municipal incorporation of the area, within meaning of statute governing municipal incorporation, which requires that such incorporation be "reasonable." Incorporation of City of Oak Grove v. City of Hattiesburg, 684 So. 2d 1274 (Miss. 1996).

Chancellor ruling on petition for municipal incorporation of semirural residential area whose land mass measured 40 square miles but whose population was only around 10,000 citizens did not abuse his discretion in denying petition rather than "narrowing down" the proposed incorporation area, where testimony at trial was more than sufficient to indicate that there was no real public necessity to incorporate the area even assuming that reasonable, smaller municipality could be carved out, especially considering that petitioners failed to present proposal for viable municipality. Incorporation of City of Oak Grove v. City of Hattiesburg, 684 So. 2d 1274 (Miss. 1996).

Proceeding on petition for municipal incorporation of semirural residential area was not proper forum for school district to argue that denial of petition would adversely affect district by leading to future annexation of area by nearby city and concomitant inclusion of annexed area in the nearby city's own school district; rather, proper forum would be proceeding on any future annexation petition filed by the nearby city. Incorporation of City of Oak Grove v. City of Hattiesburg, 684 So. 2d 1274 (Miss. 1996).

In determining whether two thirds of the qualified electors were in favor of a proposed incorporation, the chancellor should have considered the fact that a number of the signers of the original petition had asked to have their names withdrawn; one can withdraw from a petition at any time prior to the determination of the hearing. Myrick v. Incorporation of a Designated Area into Mun. Corp. to be Named Stringer, 336 So. 2d 209 (Miss. 1976).

Legislation authorizing creation of utility district did not encroach upon or restrict trial court's discretion so that it was in any way prevented from decreasing the size of the incorporated territory if it were determined that public convenience and necessity dictated a smaller area. Hamilton v. Incorporation of Petal, 291 So. 2d 190 (Miss. 1974).

Incorporation was justified pursuant to § 21-1-17 where parties stipulated that citizens of area would be convenienced thereby, and circumstances disclosed were more than sufficient to establish public necessity, particularly in view of need for police and fire protection, public health and education, in a burgeoning area. Hamilton v. Incorporation of Petal, 291 So. 2d 190 (Miss. 1974).

Argument that trial court in assuming jurisdiction of annexation proceedings by municipality and consolidating them with incorporation proceedings of residents of community placed an undue burden upon the would-be incorporators causing them to not only prove the reasonableness of the incorporation pursuant to statutory requirements, but also burdened them with refuting the reasonableness of the city's annexation proceedings, thereby confusing the issue by combining causes of action which were the antithesis of each other, was technically well-founded; however since under the statutes appertaining to either incorporation or annexation the issue basic to each was whether it was reasonable and required by public convenience and necessity, and since the trial court's opinion conclusively indicated that it was formulated from the evidence before it with the statutory issues clearly in mind, the consolidation, under the circumstances was not prejudicial error. In re Forest Hill, 280 So. 2d 837 (Miss. 1973), cert. denied, 414 U.S. 1130, 94 S. Ct. 869, 38 L. Ed. 2d 755 (1974).

Where there was an urgent need for the incorporation of the Pearl area into a municipality so that the community could cope with the problems of police protection, garbage, fire protection, drug control, health hazards, recreation, sanitation, street improvement and zoning, and the City of Jackson could not lawfully incorporate or annex the area inasmuch as the Rankin County board of supervisors had refused consent to do so and there was no indication that there would be any change on the part of the board, the chancellor erred in holding that incorporation would be unreasonable because the costs of operating the proposed municipality would be prohibitive. Boling v. City of Jackson, 279 So. 2d 590 (Miss. 1973).

The chancellor correctly permitted two individuals to intervene as objectors to a petition to create a municipality by incorporation. Boling v. City of Jackson, 258 So. 2d 443 (Miss. 1972).

Where the statutes providing for a hearing on a petition to create a municipal corporation, and to objections to such petition, extend the right to objectors to personally appear at the hearing on the merits and to present their objections orally, the published notice of the hearing could not limit such right. Boling v. City of Jackson, 258 So. 2d 443 (Miss. 1972).

Evidence that a city would not extend its corporate limits so as to afford water and sewer facilities to the territory in question for at least 15 years, supported a finding that incorporation of an area one-half mile from the city, which would aid in constructing and maintaining a municipal water and sewer system, was necessary in the interest of public convenience and necessity. City of Meridian v. Town of Marion, 255 So. 2d 906 (Miss. 1971).

The commingling of powers in the chancellor to determine the question of the existence of public convenience and necessity for the incorporation of a new municipality, as well as that of the reasonableness of the incorporation, does not violate the prohibition against unlawful delegation of governmental powers, since a finding by the chancellor of the existence of specified requirements for such incorporation is largely ministerial, affording little if any discretion on the part of the chancellor. Rouse v. City of Pascagoula, 230 So. 2d 543 (Miss. 1970).

Where, for reasons of public policy, the legislature has limited the time for appeal from a decree creating a municipality to 10 days from the date of the decree, and the appeal bond was not filed within that period, the appeal must be dismissed. Wood v. Warren, 193 So. 2d 123 (Miss. 1966).

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 26 et seq.

CJS. 62 C.J.S., Municipal Corporations §§ 43, 44.

§ 21-1-19. Costs.

In the event no objection is made to such petition, all costs of the hearing before the chancellor shall be taxed against the petitioners. In the event objection is made to such petition, such costs may be taxed by the chancellor in such manner as may be deemed by him to be equitable.

SOURCES: Codes, 1942, § 3374-09; Laws, 1950, ch. 491, § 9, eff from and after July 1, 1950.

§ 21-1-21. Appeal.

Any person interested in or aggrieved by the decree of the chancellor, and who was a party to the proceedings in the chancery court, may prosecute an appeal therefrom to the supreme court within ten days from the date of such decree by furnishing an appeal bond in the sum of five hundred dollars with two good and sufficient sureties, conditioned to pay all costs of the appeal in event the decree is affirmed. Such appeal bond shall be subject to the approval of the chancery clerk and shall operate as a supersedeas. If the decree of the chancellor be affirmed by the supreme court, then such decree shall go into effect after the passage of ten days from the date of the final judgment thereon, and the party or parties prosecuting such appeal and the sureties on their appeal bond shall be adjudged to pay all costs of such appeal.

SOURCES: Codes, 1942, § 3374-08; Laws, 1950, ch. 491, § 8, eff from and after July 1, 1950.

Cross References — Hearing on petition for municipal incorporation and decree awarded, see § 21-1-17.

Copy of decree approving municipal incorporation being sent to Secretary of State, see § 21-1-23.

Same restrictions applying to any appeal from decree enlarging or contracting municipality, see § 21-1-37.

JUDICIAL DECISIONS

1. In general.
2. Time limitations.

1. In general.

The right of appeal given by the statute is not limited to those parties who actively participated in the proceedings in chancery court, but, to fulfill the requirements of due process, since the statute provides for publication of notice to all owners of property within the area proposed to be annexed, the notice having been given, property owners within that classification became "parties to the proceedings" in the chancery court, and this status continued through the final decree which became conclusive and binding upon such owners unless reversed or modified on appeal.

Sperry Rand Corp. v. City of Jackson, 245 So. 2d 574 (Miss. 1971).

Where, for reasons of public policy, the legislature has limited the time for appeal from a decree creating a municipality to 10 days from the date of the decree, and the appeal bond was not filed within that period, the appeal must be dismissed. Wood v. Warren, 193 So. 2d 123 (Miss. 1966).

The filing of a $500 cost bond by a party appealing to the Supreme Court of Mississippi from a decree confirming a municipal ordinance extending the city limits does not operate as a supersedeas where, following an unsuccessful appeal to that court, the appellant filed a petition for certiorari in the Supreme Court of the United States. Bridges v. City of Biloxi, 253 Miss. 812, 178 So. 2d 683 (1965), motion overruled, 253 Miss. 812, 180 So. 2d 154 (1965), motion overruled, 253 Miss. 812, 180 So. 2d 641 (1965), appeal dismissed, 383 U.S. 574, 86 S. Ct. 1077, 16 L. Ed. 2d 106 (1966).

Since the statutes give an interested party a right to appeal in annexation proceeding on his furnishing a good bond in the sum of $500, and to have such bond operate as a supersedeas, the chancellor had no authority to require bonds in excess of that amount, notwithstanding that such bonds were insufficient to assure the payment of accrued costs on appeal. Dodd v. City of Jackson, 238 Miss. 372, 118 So. 2d 319 (1960).

Since the two $500 bonds were sufficient to perfect an appeal in an annexation proceeding, the $5,000 bond, erroneously required by the chancellor, would be treated as surplusage and discharged, thereby releasing the sureties thereon. Dodd v. City of Jackson, 238 Miss. 372, 118 So. 2d 319 (1960).

2. Time limitations.

It was error for a chancellor to order a city to file a supplemental preclearance request with the United States Attorney General under § 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C.S. § 1973c, because whether and how to initiate or to continue litigation was a matter of discretion for any governmental body, but, because, under both Miss. Code Ann. § 21-1-33 and Miss. Code Ann. § 21-1-21, a chancellor's decree went into effect 10 days after an appeal was decided, and the city had not requested supersedeas, the city's notice of appeal did not stay the judgment of the chancery court and prevent the city from being held in contempt. The judgment was not automatically stayed by Miss. Code Ann. § 21-1-33. City of Grenada v. Marascalco (In re Contraction, Exclusion & Deannexation of Certain Areas), 876 So. 2d 995 (Miss. 2004).

§ 21-1-23. Copy of decree sent to Secretary of State.

In the event the decree of the chancellor be in favor of the creation of such municipal corporation and no appeal is taken therefrom within ten days from the date of such decree, as is provided in Section 21-1-21, the chancery clerk shall forward to the secretary of state a certified copy of the decree creating such municipal corporation and such decree shall be filed in the office of the secretary of state and remain a permanent record thereof. In the event an appeal is taken from the decree creating such a municipal corporation, and the action of the chancellor is affirmed, then a copy of said decree shall be forwarded to the secretary of state within ten days after receipt of the mandate from the supreme court notifying the clerk of the affirmance of such decree.

SOURCES: Codes, 1942, § 3374-06; Laws, 1950, ch. 491, § 6, eff from and after July 1, 1950.

Cross References — Hearing on petition and decree's award and appeal, see §§ 21-1-17, 21-1-21.

JUDICIAL DECISIONS

1. In general.

Where, for reasons of public policy, the legislature has limited the time for appeal from a decree creating a municipality to 10 days from the date of the decree, and the appeal bond was not filed within that period, the appeal must be dismissed. Wood v. Warren, 193 So. 2d 123 (Miss. 1966).

§ 21-1-25. Commissioning of officers; first meeting.

Upon receipt of the certified copy of the decree creating a municipal corporation, the secretary of state shall issue commissions to the persons named therein to be appointed as the officers of such municipality.

As soon as practicable after receipt of such commissions from the Secretary of State, the officers receiving such commissions shall meet, upon the call of the mayor-designate and at a time and place to be fixed by him, and shall take the oath of office and shall give bond and security as other like officers are required to do under the provisions of this title. Such officers shall hold office until their successors are elected at the next ensuing municipal election and shall have qualified according to law. Such first meeting of the governing authorities shall be held within thirty days after the date such commissions are issued by the secretary of state, and at such meeting a certified copy of the decree of the chancery court creating such municipal corporation shall be entered upon the minutes of the board.

SOURCES: Codes, 1942, §§ 3374-06, 3374-07; Laws, 1950, ch. 491, §§ 6, 7, eff from and after July 1, 1950.

EXTENSION OR CONTRACTION OF CORPORATE BOUNDARIES

SEC.	
21-1-27.	Passing of ordinance.
21-1-29.	Preparing and filing of petition.
21-1-31.	Publication of notice of proposed enlargement or contraction.
21-1-33.	Hearing on petition; decree.
21-1-35.	Costs.
21-1-37.	Appeal.
21-1-39.	Copy of decree sent to secretary of state.
21-1-41.	Chancery clerk to be furnished map or plat of alterations.

§ 21-1-27. Passing of ordinance.

The limits and boundaries of existing cities, towns and villages shall remain as now established until altered in the manner hereinafter provided. When any municipality shall desire to enlarge or contract the boundaries thereof by adding thereto adjacent unincorporated territory or excluding therefrom any part of the incorporated territory of such municipality, the governing authorities of such municipality shall pass an ordinance defining with certainty the territory proposed to be included in or excluded from the corporate limits, and also defining the entire boundary as changed. In the event the municipality desires to enlarge such boundaries, such ordinance shall in general terms describe the proposed improvements to be made in the annexed territory, the manner and extent of such improvements, and the approximate time within which such improvements are to be made; such ordinance shall also contain a statement of the municipal or public services which such municipality proposes to render in such annexed territory. In the event the municipality shall desire to contract its boundaries, such ordinance shall contain a statement of the reasons for such contraction and a statement showing whereby the public convenience and necessity would be served thereby.

SOURCES: Codes, 1892, § 2912a; 1906, § 3301; Hemingway's 1917, § 5797; 1930, § 2371; 1942, § 3374-10; Laws, 1902, ch. 103; Laws, 1910, ch. 230; Laws, 1950, ch. 491, § 10.

Cross References — Combining of municipalities, see § 21-1-43.

Incorporation into municipality of islands in Gulf of Mexico or Mississippi Sound, see § 55-7-53.

Incorporation of municipal airport into corporate boundaries, see §§ 61-9-1 et seq.

Applicability of Mississippi Rules of Civil Procedure to proceedings relative to creation or alteration of municipal boundaries, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

1. In general.
2. Annexation of territory.
3. —Proposed improvements.
4. —Public convenience and necessity served.
5. —Tax liability.
6. Judicial review.
7. Under former law.

1. In general.

In granting a proposed incorporation, a chancery court properly considered that the incorporation would not impair an immediate right to annex of an adjoining city; although the incorporation might substantially hinder the city's future growth, the city did not have an unfettered right to annexation. City of Jackson v. Byram Incorporators, 16 So. 3d 662 (Miss. 2009).

Fair reading of the annexation statutes, Miss. R. Civ. P. 15(a), Miss. R. Civ. P. 81(a)(11), and applicable case law leaves no doubt that, in most instances, annexation pleadings are amendable pursuant to Miss. R. Civ. P. 15; in annexations proceedings, when errors appear in the legal description of the territory proposed to be annexed and/or in the legal description of the entire boundary as changed after enlargement/annexation, such errors may be amended pursuant to the Mississippi Rules of Civil Procedure and case law. Lamar County v. City of Hattiesburg (In re Extension of the Boundaries of Hattiesburg), 840 So. 2d 69 (Miss. 2003).

Miss. Code Ann. § 21-1-27 is not unconstitutionally vague. Lamar County v. City of Hattiesburg (In re Extension of the Boundaries of Hattiesburg), 840 So. 2d 69 (Miss. 2003).

Section 21-1-27 does not specifically state that the "entire boundary as changed" must be defined with certainty in an annexation ordinance, and therefore the failure of an original annexation ordinance to correctly define the city's existing corporate boundaries was not a critical error which should have deprived the chancery court of jurisdiction to grant an annexation; thus, the chancellor did not err in allowing the city to amend the annexation ordinance to correctly describe the entire boundary of the city. City of Southaven v. City of Horn Lake, 630 So. 2d 10 (Miss. 1993).

This statute is constitutional despite its lack of a requirement that inhabitants of an area proposed for annexation be allowed to vote on the issue, and it does not deny equal protection despite the fact that inhabitants do, by statute, vote on proposed incorporations and on citizen-sought annexations to or exclusions from areas already incorporated, incorporation and annexation being fundamentally different legal processes. Lowe v. City of Jackson, 336 So. 2d 490 (Miss. 1976), cert. denied, 429 U.S. 980, 97 S. Ct. 493, 50 L. Ed. 2d 589 (1976).

A municipality is not required to hold a public hearing or to give notice prior to adopting an ordinance expressing its intent to expand its boundaries. City of Jackson v. Town of Flowood, 331 So. 2d 909 (Miss. 1976).

The special statutes dealing with annexation ordinances control over statutes dealing with municipal ordinances generally. City of Biloxi v. Cawley, 278 So. 2d 389 (Miss. 1973).

The requirements for a petition to incorporate are not necessarily the same as the requirements for an ordinance extending the boundaries of an existing municipality, the legislature having dealt with the two situations in separate statutes. Boling v. City of Jackson, 258 So. 2d 443 (Miss. 1972).

A city could not escape its federal constitutional and statutory duties by use of the deannexation procedure, and what might be regarded as a routine municipal ordinance or proceeding in state law may be subjected to a thorough examination in federal law when the effect of the ordinance or proceeding is to deprive citizens of federally protected rights. Franklin v. City of Marks, 439 F.2d 665 (5th Cir. 1971).

The general criteria for determining whether an annexation ordinance is reasonable are: (1) the city's need for expansion; (2) whether the area sought to be annexed is reasonably within the path of such expansion; (3) the potential health hazard from sewage and waste disposal in the annexed area; and (4) the city's financial ability to make the improvements and furnish municipal services as promised. Bridges v. City of Biloxi, 253 Miss. 812, 178 So. 2d 683 (1965), motion overruled, 253 Miss. 812, 180 So. 2d 154 (1965), motion overruled, 253 Miss. 812, 180 So. 2d 641 (1965), appeal dismissed, 383 U.S. 574, 86 S. Ct. 1077, 16 L. Ed. 2d 106 (1966).

The power conferred on municipalities to extend their boundaries is subject to legislative control. Delta Elec. Power Ass'n v. Mississippi Power & Light Co., 250 Miss. 482, 149 So. 2d 504 (1963), appeal dismissed, cert. denied, 375 U.S. 77, 84 S. Ct. 196, 11 L. Ed. 2d 142 (1963), reh'g denied, 375 U.S. 981, 84 S. Ct. 478, 11 L. Ed. 2d 428 (1964).

The title to an ordinance, under which a city sought to alter its boundaries by adding certain adjacent territory and excluding certain territory already included within the existing corporate limits, was clearly expressed in a title reading "An ordinance to be enlarged, extend, modify and define the corporate limits and boundaries" of the city. Dodd v. City of Jackson, 238 Miss. 372, 118 So. 2d 319 (1960).

Notwithstanding the mandatory requirement of Code 1942, § 3374-74 that an ordinance shall not contain more than one subject, a city seeking to alter its boundaries by adding certain adjacent territory and excluding certain territory already included within the existing limits is not required to adopt two different ordinances, and thus initiate at the same time two different proceedings in a chancery court. Dodd v. City of Jackson, 238 Miss. 372, 118 So. 2d 319 (1960).

The annexation of lands to a city over the objection of their owners is not a taking of property without compensation. In re City of Meridian, 237 Miss. 486, 115 So. 2d 323 (1959).

Provisions of the statute dealing with the manner, procedure and the right of the municipal authorities to enlarge or contract the corporate limits do not contain any restriction or limitation on the right of the municipal authorities to proceed under the statute as often as they may think that the proposed enlargement or contraction is reasonable and is required by the then public convenience and necessity. In re City of Indianola, 226 Miss. 760, 85 So. 2d 212 (1956).

2. Annexation of territory.

Approval of a proposed annexation in favor of the city was proper, in part because the city was in a strong financial condition and was well-equipped to implement the services and facilities plan and the objectors conceded that the city had the financial ability to provide municipal services to the proposed annexation area. Additionally, trash pickup in the proposed annexation area occurred only once a week, which contributed to uncollected waste and the spread of disease in the area; the city presented evidence that it planned to provide garbage collection twice per week. Russell v. City of Madison (In re City of Madison), 983 So. 2d 1035 (Miss. 2008).

Chancery court has a duty to conduct a full evidentiary hearing to determine the reasonableness of a proposed annexation; therefore, the denial of a city's petition to annex a piece of land and a right-of-way without hearing any evidence was erroneous. In re Extension & Enlarging of the Boundaries of Laurel, 863 So. 2d 968 (Miss. 2004).

When a city proposing the annexation of certain real property had previously agreed with a neighboring city that this property was in the neighboring city's path of growth, the city proposing the annexation was not equitably estopped from annexing the property because equitable estoppel could not be applied to the annexing city as it was not shown that this would not be inconsistent with the public interest. In re Enlargement & Extension of the Municipal Boundaries v. City of Southaven, 864 So. 2d 912 (Miss. 2003).

When a city proposing the annexation of certain real property had previously agreed with a neighboring city that this property was in the neighboring city's path of growth, the city proposing the annexation was not judicially estopped from annexing the property because the prior agreement was not in the form of a consent decree, and, even if it had been, the city proposing the annexation would, most likely, have been relieved of its prior agreement, under Miss. R. Civ. P. 60(b)(5), because a prior city administration entered into the agreement, and one city administration could not bind its successor. In re Enlargement & Extension of the Municipal Boundaries v. City of Southaven, 864 So. 2d 912 (Miss. 2003).

Substantial and credible evidence supported trial court's decision that a city's proposed annexation of certain real estate was reasonable because (1) the annexing city needed to expand; (2) the proposed annexation area (PAA) was in the annexing city's path of growth; (3) the proposed annexation created no health hazards; (4) the annexing city could serve the PAA; (5) the PAA needed the city's zoning and planning services; (6) the PAA would need the city's other municipal services; (7) no natural barriers existed between the PAA and the city; (8) the city could serve its residents; (9) the PAA's owner sought annexation; (10) there was no impact on minority voting strength; and (11) the city's relationship with the holder of the right to provide water and sewer services to the PAA favored annexation, but it was not shown that the PAA benefitted from the city's provision of services as it was pasture land. In re Enlargement & Extension of the Municipal Boundaries v. City of Southaven, 864 So. 2d 912 (Miss. 2003).

City's proposed annexation was approved as being fair to all parties, with fairness being the proper focus of a reasonableness inquiry under Miss. Code Ann. § 21-1-33, as a complaint of higher taxes, which appeared to be minimal, could not by itself defeat the proposed annexation, where there were various benefits, including savings on fire insurance, as well as a decrease in water and sewer rates, and improved police protection, fire protection, public works, streets and drainage maintenance, paving of streets, street lighting, zoning, building codes, planning and enforcement, water, and sewer services; these benefits were well worth the additional taxes residents would be forced to pay, and when the equities were balanced, the evidence showed that the proposed annexation was reasonable. In re Enlargement & Extension of the Boundaries of the City of Macon v. City of Macon, 854 So. 2d 1029 (Miss. 2003).

Municipalities must demonstrate through plans and otherwise, that residents of annexed areas will receive something of value in return for their tax dollars in order to carry the burden of showing reasonableness. Lamar County v.

City of Hattiesburg (In re Extension of the Boundaries of Hattiesburg), 840 So. 2d 69 (Miss. 2003).

While the court may be approaching a need to employ a timetable approach and implementing a procedural remedy in the nature as discussed by Justice Sullivan and Justice Pittman in the Vicksburg and Columbus decisions, respectively, "the balancing of equity, fairness and determination of what is reasonable in the annexation process" was best accomplished in the instant matter by utilizing the well-established indicia of reasonableness. Lamar County v. City of Hattiesburg (In re Extension of the Boundaries of Hattiesburg), 840 So. 2d 69 (Miss. 2003).

While a general statement of proposed improvements is sufficient in the ordinance that begins the annexation process, reliable cost estimates and assurances that promised services will be provided are necessary to establish reasonableness; thus, a city did not satisfy its burden as to reasonableness, and therefore the lower court properly limited the annexation, where the city failed to provide adequate evidence that residents of the entire proposed annexation area would receive anything of value in return for their municipal tax dollars. Matter of Extension of Boundaries of City of Columbus (Miss. 1994) 644 So. 2d 1168, rehearing denied.

A chancellor erred in refusing to allow a city to annex part of the territory it sought where the city's need for expansion was documented by numerous expert and lay witnesses, the constraints upon development within the current boundaries were substantiated, the city was experiencing a rapid rate of growth, and the chancellor failed to consider all of the city's potential paths of growth when he ruled out the area sought to be annexed as within the normal path of the city's growth. City of Southaven v. City of Horn Lake, 630 So. 2d 10 (Miss. 1993).

The Chancery Court is charged to determine whether under the totality of the circumstances the annexation (or any part thereof) is reasonable, having due deference to the interests of the municipality and, as well, the interests of the parties affected. Bassett v. Town of Taylorsville, 542 So. 2d 918 (Miss. 1989).

Municipality's efforts to annex were denied upon findings by the chancery court, supported by substantial evidence, that the municipality lacked financial ability to make improvements and furnish municipal services to the area sought to be annexed, and that it had failed to provide adequate services to the residents of a community within its present boundaries. Extension of Boundaries v. Sherman, 492 So. 2d 289 (Miss. 1986).

An expansion proceeding was valid where, although the annexing city failed to present evidence as to the reasonableness of annexing two areas and the court accordingly deleted those two areas, such action did not constitute an unlawful amendment to the annexation ordinance; the city was not required to go forward with evidence regarding these areas, and the court, pursuant to § 21-1-33, had the authority to omit them from the proposed annexation area. City of Jackson v. Town of Flowood, 331 So. 2d 909 (Miss. 1976).

Where city met the burden of establishing that proposed annexation was feasible and reasonable and that it was financially able to provide the services it proposed to furnish residents of the annexed area, the annexation was approved. Bridges v. City of Biloxi, 253 Miss. 812, 178 So. 2d 683 (1965), motion overruled, 253 Miss. 812, 180 So. 2d 154 (1965), motion overruled, 253 Miss. 812, 180 So. 2d 641 (1965), appeal dismissed, 383 U.S. 574, 86 S. Ct. 1077, 16 L. Ed. 2d 106 (1966).

The fact that a municipal corporation would like to install a sanitary sewerage system in the territory to be added at the same time such a sewerage system is being installed within the present corporate limits is not a sufficient ground for expanding the city boundaries. In re City of Indianola, 226 Miss. 760, 85 So. 2d 212 (1956).

3. —Proposed improvements.

The requirement of this section [Code 1942, § 3374-10] that an annexation ordinance shall describe, in general terms, the proposed improvements to be made in the annexed territory, and shall also contain a statement of the municipal services which the municipality proposes to render in the annexed territory, is mandatory, and the city, in its ordinance must comply therewith. Dodd v. City of Jackson, 238 Miss. 372, 118 So. 2d 319 (1960).

The omission from the title of an annexation ordinance of the city's promises as to the improvements and services to be rendered in the territory proposed to be annexed did not render the ordinance void. Dodd v. City of Jackson, 238 Miss. 372, 118 So. 2d 319 (1960).

City ordinance which sets forth the improvements to be made in the annexed territory, describing them in general terms, and providing that they would be made when necessary and economically feasible, sufficiently complied with statutory requirement that ordinance shall in general terms describe improvements to be made in manner and extent thereof. Ritchie v. City of Brookhaven, 217 Miss. 876, 65 So. 2d 832 (1953).

This section [Code 1942, § 3374-10] does not require a municipality prior to executing its ordinance of extension to ascertain the precise cost of improvements and the sources from which town will obtain water and sewage pipes and other materials. Parker Gin Corp. v. Town of Drew, 214 Miss. 147, 58 So. 2d 372 (1952), overruled on other grounds, In re City of Indianola, 226 Miss. 760, 85 So. 2d 212 (1956).

The use of the phrases "approximate time" and "reasonable time" indicates a legislative intent to vest a broad area of discretion in the governing body, however availability of materials, their costs and the financial ability of the town to meet that cost are relevant on whether the services can be rendered within a reasonable time. Parker Gin Corp. v. Town of Drew, 214 Miss. 147, 58 So. 2d 372 (1952), overruled on other grounds, In re City of Indianola, 226 Miss. 760, 85 So. 2d 212 (1956).

4. —Public convenience and necessity served.

Evidence supported chancellor's conclusion that public convenience and necessity would be served by annexing an area where, inter alia, the annexing city had adequate facilities to take care of the area's sewage and waste water disposal, which were currently a potential health hazard, and where police service and better fire protection could be provided through annexation; though there was opposing testimony that much of the area was open or swamp land not justifying annexation, since the area was likely to become a part of the city within a reasonable period of time, annexation was appropriate so as to permit orderly development. Lowe v. City of Jackson, 336 So. 2d 490 (Miss. 1976), cert. denied, 429 U.S. 980, 97 S. Ct. 493, 50 L. Ed. 2d 589 (1976).

When the municipal governing authorities adopted an ordinance seeking an extension of the municipal limits, they, by that act, determined that the extension was required by the public convenience and necessity. Dodd v. City of Jackson, 238 Miss. 372, 118 So. 2d 319 (1960).

5. —Tax liability.

The mere fact that residents and landowners in an area proposed to be annexed will have to start paying city property taxes is not sufficient to show unreasonableness of the proposed annexation. Matter of Extension of Boundaries of City of Jackson (Miss. 1989) 551 So. 2d 861.

Property brought into a municipality by annexation is subject to taxation to discharge municipal indebtedness previously incurred and existing at the time of annexation. Bridges v. City of Biloxi, 253 Miss. 812, 178 So. 2d 683 (1965), motion overruled, 253 Miss. 812, 180 So. 2d 154 (1965), motion overruled, 253 Miss. 812, 180 So. 2d 641 (1965), appeal dismissed, 383 U.S. 574, 86 S. Ct. 1077, 16 L. Ed. 2d 106 (1966).

6. Judicial review.

Where, in a deannexation proceeding, a City relied on only one of the 12 indicia of reasonableness applicable to either annexation or deannexation under Miss. Code Ann. §§ 21-1-45, 21-1-47, and objectors presented evidence on all 12, under its limited standard of review of such proceedings, the Supreme Court of Mississippi determined that the chancellor's finding on deannexation was correct. City of Grenada v. Marascalco (In re Contraction, Exclusion & Deannexation of Certain Areas), 876 So. 2d 995 (Miss. 2004).

A trial court decree approving an ordinance enlarging a city's boundaries, as provided by this section, would be affirmed as modified where the trial court's finding that the annexation was reasonable and required by the public convenience and necessity was not manifestly wrong or clearly against the overwhelming weight of the evidence. Extension of Boundaries v. City of Biloxi, 361 So. 2d 1372 (Miss. 1978).

Evidence as to the city's alleged need for expansion, whether the specified area was reasonably within the path of such expansion, the potential health and the hazard from sewage and waste disposal, and the city's financial ability to make the improvements and furnish municipal services as promised, sustained chancellor's finding that annexation of the specified territory was reasonable. Dodd v. City of Jackson, 238 Miss. 372, 118 So. 2d 319 (1960).

When proceeding for enlargement or contraction of the corporate limits of a municipality is initiated by city authorities, the burden of proof is upon them to establish that the proposal is reasonable and that the public convenience and necessity requires that the proposal be approved. In re City of Indianola, 226 Miss. 760, 85 So. 2d 212 (1956).

Question of reasonableness of enlargement of municipality is a judicial question and determination is a proper exercise of judicial function. Ritchie v. City of Brookhaven, 217 Miss. 876, 65 So. 2d 832 (1953).

7. Under former law.

Where the mayor and aldermen of the city of Louisville by adoption of an ordinance proposing to add new territory to the city of Louisville, adjudicated that the extension was reasonable, the burden was upon the objectors to overturn such adjudication and show the extension to be unreasonable. Ball v. City of Louisville, 218 Miss. 867, 56 So. 2d 4 (1952).

Proof of publication held not requisite part of record on appeal from ordinance extending city limits. City of Pass Christian v. Town of Long Beach, 157 Miss. 778, 128 So. 554 (1930).

That rural territory was in some municipal school district did not preclude city from including within its borders the unincorporated rural territory. City of Pass Christian v. Town of Long Beach, 157 Miss. 778, 128 So. 554 (1930).

The question of changing corporate limits may be re-litigated after expiration of two years from ordinance fixing limits. Wheat v. Town of Poplarville, 144 Miss. 684, 110 So. 434 (1926).

Evidence as to reasonableness of exclusion of land from town thereof held to require peremptory instruction for petitioners. Wheat v. Town of Poplarville, 144 Miss. 684, 110 So. 434 (1926).

The extension of provisions relating to the change of boundaries of municipalities so as to make it applicable to all municipalities necessarily carried with it the limitation contained in Code 1942, in § 3377. Planters' Gin & Milling Co. v. City of Greenville, 138 Miss. 876, 103 So. 796 (1925).

The application of this section to a commission form of government as to extending boundaries of the municipality also carries the limitations on the power of municipality to adopt ordinances as contained herein. Planters' Gin & Milling Co. v. City of Greenville, 138 Miss. 876, 103 So. 796 (1925).

The issue to be tried on an appeal from an ordinance under this section extending the limits of the municipality is whether the ordinance is reasonable. Town of Crystal Springs v. Moreton, 131 Miss. 77, 95 So. 242 (1923).

On such trial the burden of proof is on the contestant who has the right to open and close the case. Town of Crystal Springs v. Moreton, 131 Miss. 77, 95 So. 242 (1923).

This case also furnishes an example of an erroneous instruction as to the burden of proof. Town of Crystal Springs v. Moreton, 131 Miss. 77, 95 So. 242 (1923).

Under this section a provision in the ordinance extending the limits of a municipality that the ordinance shall take effect at once is void; An ordinance properly passed under this section will take effect only as provided for by law. Sanders v. City of Starkville, 128 Miss. 742, 91 So. 422 (1922).

Under Laws 1912 ch. 120 (§ 3635, Code of 1942), authorizing a commission form of government, a municipality acting under said chapter and having no authority to extend its boundaries cannot supersede an appeal by providing for referendum of such ordinance. Gregory v. City of Amory, 112 Miss. 604, 73 So. 614 (1917).

In determining whether an ordinance to extend the limits of a municipality be or be not reasonable, upon an issue made up to try that question in the circuit court as provided by this section, the extension must be considered as an entirety, the question not being whether each and every portion of the territory included in the extension should, if considered separately, have been included. Forbes v. Mayor of Meridian, 86 Miss. 243, 38 So. 676 (1905).

Whether a city is entitled to annex unincorporated adjacent territory or whether the inhabitants of the territory are entitled to incorporate as a town, depends on the priority of the initial step taken by the respective side. City of Jackson v. Whiting, 84 Miss. 163, 36 So. 611 (1904).

A municipal corporation having no other powers than those granted to towns by the provisions of this chapter cannot enjoin the use of its name by designating another place and the inconvenience resulting to its citizens therefrom does not give the municipality a right to complain. Gulf & S.I.R.R. v. Town of Seminary, 81 Miss. 237, 32 So. 953 (1902).

In such case the grievances complained of are not grievances of the municipality. Gulf & S.I.R.R. v. Town of Seminary, 81 Miss. 237, 32 So. 953 (1902).

Upon appeal to the circuit court from the judgment of the municipal authorities changing the boundaries of a municipality under this and the next succeeding section, the trial is de novo and there is no necessity for a bill of exceptions. Yerger v. Town of Greenwood, 77 Miss. 378, 27 So. 620 (1900).

RESEARCH REFERENCES

ALR. Refusal of municipality to annex impoverished area as violative of federal law. 22 A.L.R. Fed. 272.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 55-85.

13C Am. Jur. Legal Forms 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 180:56 (ordinance extending and increasing corporate limits of city).

18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, etc., Forms 11, 12 (annexing adjoining territory).

18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, etc., Forms 15, 16 (ordinance extending city limits invalid).

18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, etc., Form 18 (notice of hearing on petition to exclude property from annexation).

11 Am. Jur. Proof of Facts 2d, Contiguity of Land Annexed by Municipality, §§ 8 et seq. (proof of lack of contiguity).

CJS. 62 C.J.S., Municipal Corporations § 57.

Law Reviews. 1978 Mississippi Supreme Court Review: Administrative Law. 50 Miss. L. J. 11, March 1979.

§ 21-1-29. Preparing and filing of petition.

When any such ordinance shall be passed by the municipal authorities, such municipal authorities shall file a petition in the chancery court of the county in which such municipality is located; however, when a municipality wishes to annex or extend its boundaries across and into an adjoining county such municipal authorities shall file a petition in the chancery court of the county in which such territory is located. The petition shall recite the fact of the adoption of such ordinance and shall pray that the enlargement or contraction of the municipal boundaries, as the case may be, shall be ratified, approved and confirmed by the court. There shall be attached to such petition, as exhibits thereto, a certified copy of the ordinance adopted by the municipal authorities and a map or plat of the municipal boundaries as they will exist in event such enlargement or contraction becomes effective.

SOURCES: Codes, 1942, § 3374-11; Laws, 1950, ch. 491, § 11; Laws, 1960, ch. 422.

Cross References — Judicial definitions and illustrations generally, see §§ 1-3-1 et seq.

JUDICIAL DECISIONS

1. In general.
2. Evidence.

1. In general.

City's proposed annexation was approved as being fair to all parties, with fairness being the proper focus of a reasonableness inquiry under Miss. Code Ann. § 21-1-33, as a complaint of higher taxes, which appeared to be minimal, could not by itself defeat the proposed annexation, where there were various benefits, including savings on fire insurance, as well as a decrease in water and sewer rates, and improved police protection, fire protection, public works, streets and drainage maintenance, paving of streets, street lighting, zoning, building codes, planning and enforcement, water, and sewer services; these benefits were well worth the additional taxes residents would be forced to pay, and when the equities were balanced, the evidence showed that the proposed annexation was reasonable. In re Enlargement & Extension of the Boundaries of the City of Macon v. City of Macon, 854 So. 2d 1029 (Miss. 2003).

The Chancery Court is charged to determine whether under the totality of the circumstances the annexation (or any part thereof) is reasonable, having due deference to the interests of the municipality and, as well, the interests of the parties affected. Bassett v. Town of Taylorsville, 542 So. 2d 918 (Miss. 1989).

Under § 21-1-29, a city can confirm an annexation only through formal judicial proceedings instituted in the Chancery Court where the city or land is located. Mayor of City of Vicksburg v. Vicksburg Printing & Publishing Co., 434 So. 2d 1333 (Miss. 1983).

The alleged failure of a city to comply with a requirement that an ordinance expanding city limits be approved pursuant to the Federal Voting Rights Act before it can become effective, was not ground for reversal of a decree ratifying, approving, and confirming the city ordinance expanding the city's limits, since the Mississippi statute does not require the city to have its ordinance approved or confirmed by anyone other than the chancery court, and the Voting Rights Act requires compliance only in order to have the ordinance enforced. Sperry Rand Corp. v. City of Jackson, 248 So. 2d 810 (Miss. 1971).

Where city met the burden of establishing that proposed annexation was feasible and reasonable and that it was financially able to provide the services it proposed to furnish residents of the annexed area, the annexation was approved. Bridges v. City of Biloxi, 253 Miss. 812, 178 So. 2d 683 (1965), motion overruled, 253 Miss. 812, 180 So. 2d 154 (1965), motion overruled, 253 Miss. 812, 180 So. 2d 641 (1965), appeal dismissed, 383 U.S. 574, 86 S. Ct. 1077, 16 L. Ed. 2d 106 (1966).

The contention of property owners in a new area annexed to a city that they are thereby denied due process and equal protection of the laws because their property will be subject to taxation to pay general obligation bonds issued by the city before the annexation ordinance was passed is not supported either by reason or by authority. Bridges v. City of Biloxi, 253 Miss. 812, 178 So. 2d 683 (1965), motion overruled, 253 Miss. 812, 180 So. 2d 154 (1965), motion overruled, 253 Miss. 812, 180 So. 2d 641 (1965), appeal dismissed, 383 U.S. 574, 86 S. Ct. 1077, 16 L. Ed. 2d 106 (1966).

The burden of proof of public convenience and necessity for the expansion of the corporate limits is upon the city seeking court approval of its actions in that respect. Walker v. City of Moss Point, 252 Miss. 511, 175 So. 2d 173 (1965).

On an application to obtain the court's approval of a proposed annexation, the city has the burden of showing it to be reasonable, and if the chancellor's finding of reasonableness or unreasonableness is supported by substantial evidence, the supreme court will not disturb it. In re City of Forest, 247 Miss. 340, 153 So. 2d 688 (1963).

The annexation ordinance need not be introduced into evidence where a certified copy was attached to the petition as an exhibit. In re City of Meridian, 237 Miss. 486, 115 So. 2d 323 (1959).

2. Evidence.

Court upheld an order that a city's proposed annexation of a convenience store/gas station was unreasonable because the evidence was clear that the only individual to benefit from the proposed annexation would be the owner of the convenience store/gas station; the owner testified that he could increase revenues by being allowed to sell beer from his convenience store. In re Extension & Enlarging of Boundaries of the City of Laurel, 922 So. 2d 791 (Miss. 2006).

ATTORNEY GENERAL OPINIONS

An annexation is final and effective for all purposes 10 days after issuance of the decree by the chancery court, or 10 days after final determination of an appeal, except that citizens residing in an annexed area may not participate in future municipal elections as electors or as candidates, unless and until pre-clearance by the U.S. Department of Justice is obtained pursuant to Section 5 of the Voting Rights Act. Mallette, March 2, 2007, A.G. Op. #07-00096, 2007 Miss. AG LEXIS 72, modifying Rafferty, November 27, 2006, A.G. Op. #06-00598, 2006 Miss. AG LEXIS 428, as to the effective date of annexation for all purposes other than voting and candidacy.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 76.

18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, etc., Form 1 (municipal incorporation of intercounty area).

18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, Counties, and Other Political Subdivisions, Form 45 (Petition or application — To disconnect property from municipality).

CJS. 62 C.J.S., Municipal Corporations § 80.

Law Reviews. 1978 Mississippi Supreme Court Review: Administrative Law. 50 Miss. L. J. 11, March 1979.

§ 21-1-31. Publication of notice of proposed enlargement or contraction.

Upon the filing of such petition and upon application therefor by the petitioner, the chancellor shall fix a date certain, either in term time or in vacation, when a hearing on said petition will be held, and notice thereof shall be given in the same manner and for the same length of time as is provided in Section 21-1-15 with regard to the creation of municipal corporations, and all parties interested in, affected by, or being aggrieved by said proposed enlargement or contraction shall have the right to appear at such hearing and present their objection to such proposed enlargement or contraction. However, in all cases of the enlargement of municipalities where any of the territory proposed to be incorporated is located within three miles of another existing municipality, then such other existing municipality shall be made a party defendant to said petition and shall be served with process in the manner provided by law, which process shall be served at least thirty days prior to the date set for the hearing.

SOURCES: Codes, 1942, § 3374-12; Laws, 1950, ch. 491, § 12, eff from and after July 1, 1950.

Cross References — Methods of publishing notice of special improvement, see § 21-41-51.

JUDICIAL DECISIONS

1. In general.

Objectors to the annexation contended that the city failed to prove that adequate notice was given. However, in the affidavit filed by the city, the affiant specifically stated the exact locations and dates of his postings of notice of the hearings in his affidavit as required by Miss. R. Civ. P. 4(f) and Miss. Code Ann. § 21-1-15 and Miss. Code Ann. § 21-1-31; the chancellor did not commit manifest error by allowing the detailed affidavit to constitute adequate proof of notice. Weeks v. City of Clinton (In re City of Clinton), 920 So. 2d 452 (Miss. 2006).

Burden of proof that a city posted notices pursuant to Miss. Code Ann. § 21-1-15 of a proposed annexation of land before an annexation hearing was on the city, and when the city failed to present sufficient evidence that it met this burden, the chancery court was without jurisdiction to consider the city's annexation petition. Norwood v. In re Extension of the Boundaries of Itta Bena, 788 So. 2d 747 (Miss. 2001).

A county board of education was an agent of the State, and therefore had the authority to object to a proposed annexation. The board of education was a party interested in, affected by or aggrieved by the proposed annexation within the meaning of § 21-1-31, where the territory sought to be annexed was served by schools administered by the county board of education. Additionally, the school board had the authority to exercise its standing and to employ counsel and participate fully in the annexation confirmation proceeding. Harrison County v. City of Gulfport, 557 So. 2d 780, 17 A.L.R.5th 974 (Miss. 1990).

A county had standing under § 21-1-31 to object to the annexation of county territory by a city since it was a party interested in, affected by or aggrieved by the annexations. Furthermore, a combined reading of §§ 11-45-17, 11-45-19, and 19-3-47(1)(b) vested in the county, acting by and through its board of supervisors, authority to exercise its standing and to employ counsel and participate fully in each annexation and confirmation proceeding. Harrison County v. City of Gulfport, 557 So. 2d 780, 17 A.L.R.5th 974 (Miss. 1990).

A party's assertion of an interest or effect goes a long way toward establishing that it has an interest in, or will likely be affected by, an annexation. Harrison County v. City of Gulfport, 557 So. 2d 780, 17 A.L.R.5th 974 (Miss. 1990).

In an action by objectors to the proposed annexation of property by a municipality, the determination of the reasonableness of the annexation was a judicial function, and thus, the chancellor's failure to recognize his role as a judicial officer, rather than as a ministerial one, would require remand for a new hearing. Western Line Consol. Sch. Dist. v. City of Greenville, 465 So. 2d 1057 (Miss. 1985).

In an action to confirm a city's proposed annexation of territory, the returns of the deputy sheriff who posted the notices thereof were sufficient to comply with the statute regarding proof of posting of notice, even though there was no affidavit attesting to the posting. Nowlin v. City of Pearl, 365 So. 2d 952 (Miss. 1978), cert.

denied, 441 U.S. 946, 99 S. Ct. 2167, 60 L. Ed. 2d 1049 (1979).

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 51, 52 et seq.

18A Am. Jur. Pl & Pr Forms (Rev), Notice, Form 1 (notice, general form).

18A Am. Jur. Pl & Pr Forms (Rev), Notice, Forms 24, 25 (affidavit of notice by posting or publication).

1 Am. Jur. Proof of Facts, Advertisements, Proof Nos. 1, 2 (posting and publication of advertisements).

CJS. 62 C.J.S., Municipal Corporations § 79.

Law Reviews. 1978 Mississippi Supreme Court Review: Administrative Law. 50 Miss. L. J. 11, March 1979.

§ 21-1-33. Hearing on petition; decree.

If the chancellor finds from the evidence presented at such hearing that the proposed enlargement or contraction is reasonable and is required by the public convenience and necessity and, in the event of an enlargement of a municipality, that reasonable public and municipal services will be rendered in the annexed territory within a reasonable time, the chancellor shall enter a decree approving, ratifying and confirming the proposed enlargement or contraction, and describing the boundaries of the municipality as altered. In so doing the chancellor shall have the right and the power to modify the proposed enlargement or contraction by decreasing the territory to be included in or excluded from such municipality, as the case may be. If the chancellor shall find from the evidence that the proposed enlargement or contraction, as the case may be, is unreasonable and is not required by the public convenience and necessity, then he shall enter a decree denying such enlargement or contraction. In any event, the decree of the chancellor shall become effective after the passage of ten days from the date thereof or, in event an appeal is taken therefrom, within ten days from the final determination of such appeal. In any proceeding under this section the burden shall be upon the municipal authorities to show that the proposed enlargement or contraction is reasonable.

SOURCES: Codes, 1942, § 3374-13; Laws, 1950, ch. 491, § 13, eff from and after July 1, 1950.

Cross References — Applicability of Mississippi Rules of Civil Procedure to proceedings relative to creation or alteration of municipal boundaries, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

1. In general.
2. Construction.
3. Constitutionality.
4. Scope of hearing.
5. Burden of proof.
6. Objections by residents.
7. Evidence.
8. Decree.
9. Judicial review.
10. Time limitations.

11. Under former law.

1. In general.

Chancellor erred in its denial of the parties' motion in that it put forth as the effective date of the decree of annexation the date of entry instead of ten days after determination of appeal, Miss. Code Ann. § 21-1-33, and usurped the exclusively legislative function of the city's determining whether to pursue annexation procedures. In re Extension of the Boundaries of Sardis, 954 So. 2d 434 (Miss. 2007).

Annexation is reasonable only if it is fair; in making this determination, annexation must be viewed from perspective of both city and landowners of proposed annexation area. Bunch v. City of Jackson, 691 So. 2d 978 (Miss. 1997), reh'g denied, 700 So. 2d 331 (Miss. 1997).

Court asked to approve municipality's annexation request must determine whether annexation is reasonable under totality of circumstances. Burch v. Town of Mantachi, 685 So. 2d 724 (Miss. 1996).

The 12 indicia of reasonableness of an annexation are: (1) the municipality's need to expand; (2) whether the area sought to be annexed is reasonably within a path of growth of the city; (3) potential health hazards from sewage and waste disposal in the annexed areas; (4) the municipality's financial ability to make the improvements and furnish municipal services promised; (5) the need for zoning and overall planning in the area; (6) the need for municipal services in the area sought to be annexed; (7) whether there are natural barriers between the city and the proposed annexation area; (8) past performance and the time element involved in the city's provision of services to its present residents; (9) economic or other impact of the annexation upon those who live in or own property in the proposed annexation area; (10) the impact of the annexation upon the voting strength of protected minority groups; (11) whether the property owners and other inhabitants of the areas sought to be annexed have in the past, and in the foreseeable future unless annexed will, because of their reasonable proximity to the corporate limits of the municipality, enjoy economic and social benefits of the municipality without paying their fair share of taxes; and (12) any other factors that may suggest reasonableness; these 12 factors are not separate, independent tests which are conclusive as to reasonableness, but rather are "mere indicia of reasonableness." Perry v. Guion, 650 So. 2d 490 (Miss. 1995); Burch v. Town of Mantachi, 685 So. 2d 724 (Miss. 1996); Bunch v. City of Jackson, 691 So. 2d 978 (Miss. 1997), reh'g denied, 700 So. 2d 331 (Miss. 1997).

The factors enumerated in Dodd v. City Jackson (Miss. 1960) 118 So. 2d 319, 330, as expanded over the years in later decisions, are not separate and independent tests but mere indicia of reasonableness, and the court's determination in the end must be whether, under the totality of the circumstances, the annexation, or any part thereof, is reasonable. Magnolia Marine Transp. Co. v. City of Vicksburg, 560 So. 2d 713 (Miss. 1990).

The Chancery Court is charged to determine whether under the totality of the circumstances the annexation (or any part thereof) is reasonable, having due deference to the interests of the municipality and, as well, the interests of the parties affected. Bassett v. Town of Taylorsville, 542 So. 2d 918 (Miss. 1989).

Section 21-1-33, rather than § 21-1-13, is a controlling statute where a petition is filed to confirm the annexation of territory to a municipality. McElhaney v. City of Horn Lake, 501 So. 2d 401 (Miss. 1987).

An expansion proceeding was valid where, although the annexing city failed to present evidence as to the reasonableness of annexing two areas and the court accordingly deleted those two areas, such action did not constitute an unlawful amendment to the annexation ordinance; the city was not required to go forward with evidence regarding these areas, and the court, pursuant to this section, had the authority to omit them from the proposed annexation area. City of Jackson v. Town of Flowood, 331 So. 2d 909 (Miss. 1976).

Argument that trial court in assuming jurisdiction of annexation proceedings by municipality and consolidating them with incorporation proceedings of residents of community placed an undue burden upon the would-be incorporaters causing them to not only prove the reasonableness of the incorporation pursuant to statutory requirements, but also burdened them with refuting the reasonableness of the city's annexation proceedings, thereby confusing the issue by combining causes of action which were the antithesis of each other, was technically well-founded; however since under the statutes appertaining to either incorporation or annexation the issue basic to each was whether it was reasonable and required by public convenience and necessity, and since the trial court's opinion conclusively indicated that it was formulated from the evidence before it with the statutory issues clearly in mind, the consolidation, under the circumstances was not prejudicial error. In re Forest Hill, 280 So. 2d 837 (Miss. 1973), cert. denied, 414 U.S. 1130, 94 S. Ct. 869, 38 L. Ed. 2d 755 (1974).

The contention of property owners in a new area annexed to a city that they are thereby denied due process and equal protection of the laws because their property will be subject to taxation to pay general obligation bonds issued by the city before the annexation ordinance was passed is not supported either by reason or by authority. Bridges v. City of Biloxi, 253 Miss. 812, 178 So. 2d 683 (1965), motion overruled, 253 Miss. 812, 180 So. 2d 154 (1965), motion overruled, 253 Miss. 812, 180 So. 2d 641 (1965), appeal dismissed, 383 U.S. 574, 86 S. Ct. 1077, 16 L. Ed. 2d 106 (1966).

In a proceeding under this section [Code 1942, § 3374-13], there is no constitutional right to trial by jury. In re City of Meridian, 237 Miss. 486, 115 So. 2d 323 (1959).

2. Construction.

Mississippi Supreme Court declares as antiquated the prior jurisdiction doctrine as it relates to annexation litigation, and to the extent that any of its prior cases have recognized and applied this doctrine, these prior cases are to that limited extent overruled. City of D'Iberville v. City of Biloxi (In re Enlargement & Extension of the Municipal Boundaries), 867 So. 2d 241 (Miss. 2004).

3. Constitutionality.

The requirement that the chancery court determine the issue of public convenience and necessity is unconstitutional, since the issue is a legislative one to be decided by the municipality's governing board. City of Jackson v. Town of Flowood, 331 So. 2d 909 (Miss. 1976).

4. Scope of hearing.

Chancery court has a duty to conduct a full evidentiary hearing to determine the reasonableness of a proposed annexation; therefore, the denial of a city's petition to annex a piece of land and a right-of-way without hearing any evidence was erroneous. In re Extension & Enlarging of the Boundaries of Laurel, 863 So. 2d 968 (Miss. 2004).

Ultimate determination in annexation case must be whether annexation is reasonable under totality of circumstances. Bunch v. City of Jackson, 691 So. 2d 978 (Miss. 1997), reh'g denied, 700 So. 2d 331 (Miss. 1997).

Role of judiciary in annexations is limited to determining whether annexation is reasonable. In re City of Newton, 238 Miss. 405, 117 So. 2d 199 (1960); McElhaney v. City of Horn Lake, 501 So. 2d 401 (Miss. 1987); Bunch v. City of Jackson, 691 So. 2d 978 (Miss. 1997), reh'g denied, 700 So. 2d 331 (Miss. 1997).

In determining reasonableness of city's annexation proposal, court must consider proposal in light of area as a whole, considering concern of both city and landowners. Burch v. Town of Mantachi, 685 So. 2d 724 (Miss. 1996).

Chancellor's determination of reasonableness of proposed annexation is judicial function, not ministerial one. Western Line Consol. Sch. Dist. v. City of Greenville, 465 So. 2d 1057 (Miss. 1985).

A cross-petition by residents of a town seeking to be excluded from the existing corporate limits, filed in a proceeding to confirm an ordinance extending city boundaries, was properly dismissed because the powers of the chancery court in such a proceeding are limited to approving, modifying, or denying the proposed ordinance, and the court cannot consider matters not concerning the ordinance. Ferguson v. Town of Vaiden, 242 So. 2d 124 (Miss. 1970).

The chancery court, in a proceeding under this section [Code 1942, § 3374-13], is governed entirely by statute and it may

(1) ratify and approve the ordinance if found to be reasonable, (2) modify the proposed enlargement or contraction by decreasing the territory to be included or excluded, or (3) deny in toto the proposed enlargement or contraction. Lippian v. Ros, 253 Miss. 325, 175 So. 2d 138 (1965).

The chancery court does not have the power under this section [Code 1942, § 3374-13] to defer the effective date of an ordinance enlarging the boundaries of a municipality. Lippian v. Ros, 253 Miss. 325, 175 So. 2d 138 (1965).

5. Burden of proof.

To show reasonableness of annexation, municipalities must demonstrate, through plans and otherwise, that residents of annexed areas will receive something of value in return for their tax dollars. Burch v. Town of Mantachi, 685 So. 2d 724 (Miss. 1996); Bunch v. City of Jackson, 691 So. 2d 978 (Miss. 1997), reh'g denied, 700 So. 2d 331 (Miss. 1997).

In a proceeding for confirmation of a city's proposed annexation of adjoining land, any detriment to a nearby city was only required to be given "great weight" under the twelfth "other factors" indicium of reasonableness, and therefore the annexing city was not required to show "clear, strong proof" on the 12 indicia of reasonableness merely because the nearby city claimed that the proposed annexation would have a detrimental impact on it by limiting its northern path of growth. Perry v. Guion, 650 So. 2d 490 (Miss. 1995).

While a general statement of proposed improvements is sufficient in the ordinance that begins the annexation process, reliable cost estimates and assurances that promised services will be provided are necessary to establish reasonableness; thus, a city did not satisfy its burden as to reasonableness, and therefore the lower court properly limited the annexation, where the city failed to provide adequate evidence that residents of the entire proposed annexation area would receive anything of value in return for their municipal tax dollars. Robinson v. City of Columbus, 644 So. 2d 1168 (Miss. 1994).

The burden of proving reasonableness of annexation is upon the petitioner, the city seeking to accomplish the annexation. In re City of Indianola, 226 Miss. 760, 85 So. 2d 212 (1956); Spears v. City of Oxford, 227 Miss. 801, 87 So. 2d 61 (1956); McElhaney v. City of Horn Lake, 501 So. 2d 401 (Miss. 1987).

Where city met the burden of establishing that proposed annexation was feasible and reasonable and that it was financially able to provide the services it proposed to furnish residents of the annexed area, the annexation was approved. Bridges v. City of Biloxi, 253 Miss. 812, 178 So. 2d 683 (1965), motion overruled, 253 Miss. 812, 180 So. 2d 154 (1965), motion overruled, 253 Miss. 812, 180 So. 2d 641 (1965), appeal dismissed, 383 U.S. 574, 86 S. Ct. 1077, 16 L. Ed. 2d 106 (1966).

The burden of proof of public convenience and necessity for the expansion of the corporate limits is upon the city seeking court approval of its actions in that respect. Walker v. City of Moss Point, 252 Miss. 511, 175 So. 2d 173 (1965).

In a proceeding by a city for the ratification, approval and confirmation of an ordinance extending the city's corporate limits, the burden of proof is on the city to establish that its proposal is reasonable and required by the public convenience and necessity. In re City of Phila., 232 Miss. 582, 100 So. 2d 100 (1958).

Where a petition for adoption of city ordinance seeking enlargement of municipal boundaries literally complied with the statute, it was not necessary to allege in the petition that the ordinance was published as required by law. Ritchie v. City of Brookhaven, 217 Miss. 876, 65 So. 2d 832 (1953).

6. Objections by residents.

City's proposed annexation was approved as being fair to all parties, with fairness being the proper focus of a reasonableness inquiry under Miss. Code Ann. § 21-1-33, as a complaint of higher taxes, which appeared to be minimal, could not by itself defeat the proposed annexation, where there were various benefits, including savings on fire insurance, as well as a decrease in water and sewer rates, and improved police protection, fire protection, public works, streets and drainage maintenance, paving of streets, street lighting, zoning, building codes, planning and enforcement, and water, and sewer services; these benefits were well worth the additional taxes residents would be forced to pay, and when the equities were balanced, the evidence showed that the proposed annexation was reasonable. In re Enlargement & Extension of the Boundaries of the City of Macon v. City of Macon, 854 So. 2d 1029 (Miss. 2003).

The mere fact that residents and landowners in an area proposed to be annexed will have to start paying city property taxes is not sufficient to show unreasonableness of the proposed annexation. City of Jackson v. City of Ridgeland, 551 So. 2d 861 (Miss. 1989).

A cross-petition by residents of a town, seeking to be excluded from the existing corporate limits, filed in a proceeding to confirm an ordinance extending city boundaries was properly dismissed because the powers of the chancery court in such a proceeding are limited to approving, modifying, or denying the proposed ordinance, and the court cannot consider matters not concerning the ordinance. Ferguson v. Town of Vaiden, 242 So. 2d 124 (Miss. 1970).

The contention of property owners in a new area annexed to a city that they were denied due process and equal protection of the laws because their property was subject to taxation to pay general obligation bonds issued by the city before the annexation ordinance was passed was not supported either by reason or by authority. Bridges v. City of Biloxi, 253 Miss. 812, 178 So. 2d 683 (1965), motion overruled, 253 Miss. 812, 180 So. 2d 154 (1965), motion overruled, 253 Miss. 812, 180 So. 2d 641 (1965), appeal dismissed, 383 U.S. 574, 86 S. Ct. 1077, 16 L. Ed. 2d 106 (1966).

7. Evidence.

Chancery court properly determined that a city's annexation of its neighbors into its boundaries was reasonable and supported by the evidence where the city had spilled over into the proposed annexation area (PAA) and was continuing to expand into the county; unregulated development in the PAA was putting a strain on utilities and other municipal services. In re Enlarging City of Brookhaven, 957 So. 2d 382 (Miss. 2007).

Chancellor's finding of reasonableness in a city's annexation petition for the proposed annexation area (PAA) was affirmed given the factors shown, such as population increase, the city's growth path toward the PAA, and the city's spillover. Also, the city had zoning ordinances to assist in planning, and the city had substantially fulfilled past annexation promises. Poole v. City of Pearl (In re Extension of the Boundaries), 908 So. 2d 728 (Miss. 2005).

Chancellor's finding that two cities each had a reasonable need for expansion but were limited in the direction in which they could expand, that it would be premature to award a certain portion of the proposed annexation area to either city because it was largely undeveloped, and that the area awarded to each was sufficient to meet its needs, were all reasonable contentions and supported by the evidence; therefore, the chancellor's decision to partially grant and partially deny the cities' petitions was reasonable City of D'Iberville v. City of Biloxi (In re Enlargement & Extension of the Municipal Boundaries), 867 So. 2d 241 (Miss. 2004).

Trial court properly found that the proposed annexation of an area was reasonable because (1) the city had a need for expansion, (2) the area was in the path of the city's growth, (3) there were no natural boundaries between the city and the area, (4) there were potential health hazards in the area, (5) the city had a financial ability to provide services to the area, (6) the area needed zoning, (7) the city's municipal services were of benefit to the area, (8) the city provided adequate services to its citizens, (9) there was no adverse impact, other than the raising of taxes, on the area residents, (10) minority voting strength was not going to be negatively affected, and (11) area residents were receiving benefits from the city and it was appropriate that they shared in the tax responsibility for such services. Prestridge v. City of Petal, 841 So. 2d 1048 (Miss. 2003).

Evidence supported the reasonableness of a proposed annexation where (1) the city established a need to expand due to it's population increase, economic growth, limited areas in which to grow, traffic congestion, and need for access to an interstate highway, (2) the area that the city sought to annex was in the city's path of growth, (3) over 85 percent of the people in the area the city sought to annex were without public water or sewer and thus presented a potential health hazard, (4) the city had the financial ability to make improvements and pay the necessary increase in operating expenses caused by the annexation, (5) there was a need for overall planning and zoning, (6) the area that the city sought to annex was in need of municipal services, (7) the natural barriers were not sufficient to prohibit the annexation, (8) the city had provided in a timely fashion the capital improvements and municipal services to the area as provided in an earlier annexation, (9) the residents of the area that the city sought to annex would receive capital improvements and municipal services that would outweigh the impact of additional taxes, (10) the annexation would not cause any dilution of minority voting strength, and (11) many of the residents of the area that the city sought to annex worked in the city and used city facilities. In re Enlargement & Extension of the Municipal Boundaries v. City of Biloxi, 744 So. 2d 270 (Miss. 1999).

Record did not support finding that state capital's proposed annexation of 24.25 square miles of territory outside of its existing corporate limits was reasonable; city's population was decreasing, commercial building permits had decreased considerably despite availability of considerable vacant, developable land within city, city admitted that it wanted revenues that annexation would provide by expanding city's tax base, city failed to prove that current services in proposed annexation area were inadequate, and city school official testified that, with exception of possibly two schools, all city schools were operating at or above capacity, and that no thought had been given to where annexed students would attend school. Bunch v. City of Jackson, 691 So. 2d 978 (Miss. 1997), reh'g denied, 700 So. 2d 331 (Miss. 1997).

Facts that there had been no significant population growth and/or that there was relatively high percentage of undeveloped land within existing city limits, should, at very least, be impediment to annexation. Bunch v. City of Jackson, 691 So. 2d 978 (Miss. 1997), reh'g denied, 700 So. 2d 331 (Miss. 1997).

Although it has been held that city's need to maintain or expand its tax base, especially as growth and development occurs on its perimeters, is factor to be considered when determining reasonableness of proposed annexation, Supreme Court has been very critical of annexations which are in effect "tax grabs." Bunch v. City of Jackson, 691 So. 2d 978 (Miss. 1997), reh'g denied, 700 So. 2d 331 (Miss. 1997).

When current services in proposed annexation area are adequate, fact that annexation may enhance municipal services should not be given much relevance, especially where evidence of likelihood of enhanced service is greatly conflicting. Bunch v. City of Jackson, 691 So. 2d 978 (Miss. 1997), reh'g denied, 700 So. 2d 331 (Miss. 1997).

Chancellor's decision that town's annexation request was reasonable was supported by evidence that town population was growing, no good residential building locations were left, proposed area was in path of growth, lack of sewer hookups in proposed area created health hazard, town had plan and financial ability to provide services to area, garbage collection costs would be lowered, and annexation would make industrial development possible. Burch v. Town of Mantachi, 685 So. 2d 724 (Miss. 1996).

Plans that call for extension of services into annexation areas when economically feasible are not per se unreasonable, but if there is evidence of lack of commitment, such as general failure to estimate costs and plan for implementation of municipal services, then reasonableness of annexation proposal can fairly be questioned. Burch v. Town of Mantachi, 685 So. 2d 724 (Miss. 1996).

Town's promise to provide sewer improvement when economically feasible did not render annexation request unreasonable where town had made preliminary cost estimates and plans. Burch v. Town of Mantachi, 685 So. 2d 724 (Miss. 1996).

Evidence was not sufficient to justify chancellor's finding that city accountant testified that without MP & L plant, annexation was not feasible, where record revealed that city accountant only admitted that loss of MP & L would adversely affect city's bonding capacity and would significantly affect feasibility of annexation. City of Greenville v. Farmers, Inc., 513 So. 2d 932 (Miss. 1987).

Municipality's efforts to annex were denied upon findings by the chancery court, supported by substantial evidence, that the municipality lacked financial ability to make improvements and furnish municipal services to the area sought to be annexed, and that it had failed to provide adequate services to the residents of a community within its present boundaries. Extension of Boundaries v. Sherman, 492 So. 2d 289 (Miss. 1986).

The annexation ordinance need not be introduced into evidence where a certified copy was attached to the petition as an exhibit. In re City of Meridian, 237 Miss. 486, 115 So. 2d 323 (1959).

Opinion evidence that a majority of the qualified electors, both in the city proper and in the added territory, would vote both now and in the future against a bond issue to provide municipal services was too speculative and conjectural to amount to proof. In re City of Phila., 232 Miss. 582, 100 So. 2d 100 (1958).

In a proceeding by a city for the ratification, approval and confirmation of an ordinance extending the city's corporate limits, a witness, who had BS and MS degrees from Mississippi State College, passed the state department of public accountant's examination for certified public accountants, and had been certified under Code 1942, § 8908 and had made an audit of the city's records himself, was properly permitted to testify as to the assessed valuation of the property within the city and the amount of bonds which could be issued, without further qualification of his evidence. In re City of Phila., 232 Miss. 582, 100 So. 2d 100 (1958).

In a proceeding by a city for a decree adjudging an enlargement of the city limits, although the chancellor is not bound by the adjudication of the mayor and board of aldermen that the proposed extension was reasonable, and had the right to determine for himself whether the extension was reasonable and was required by the public convenience and necessity, the chancellor was entitled to give some weight to the opinion of the city authorities. In re City of Indianola, 226 Miss. 760, 85 So. 2d 212 (1956).

8. Decree.

In a consolidated suit, the City of Ridgeland, Mississippi, prevailed on its petition to annex land in Madision County, Mississippi; the chancellor erred by removing a business park from Ridgeland and awarding it to Jackson, Mississippi, because Ridgeland had less land available for development and a far greater need to expand its borders. The chancery court was directed to enter a judgment with the new boundaries of the municipalities, pursuant to Miss. Code Ann. § 21-1-33. In re Enlargement & Extension of City of Jackson v. City of Ridgeland, 912 So. 2d 961 (Miss. 2005).

A chancery court sitting in an annexation confirmation proceeding may confirm the annexation of an area less than all the municipality seeks to annex. Magnolia Marine Transp. Co. v. City of Vicksburg, 560 So. 2d 713 (Miss. 1990).

An annexation ordinance becomes effective, when, and not before, it is approved by a decree of the chancery court, and neither recording nor signing of such an ordinance in the ordinance book will render it effective without such approval. City of Biloxi v. Cawley, 278 So. 2d 389 (Miss. 1973).

A decree which ratified, approved, and confirmed a city ordinance expanding the city's limits, as modified by the trial court to exclude the property of objectors pursuant to an agreement between the city and objectors, was not a "consent decree" insofar as modification was concerned, and the decree which recited that the trial court had heard testimony and that the ordinance as modified was reasonable did not amount to an amendment of the ordinance by the city without a proper amendatory ordinance. Sperry Rand Corp. v. City of Jackson, 248 So. 2d 810 (Miss. 1971).

While it is better form for the decree in a proceeding to confirm the extension of city boundaries to state that the chancellor has found that reasonable municipal services will be rendered in the annexed territory within a reasonable time, failure to so state does not render the decree invalid, it being apparent that this section [Code 1942, § 3374-13] requires only that the chancellor enter a decree approving, ratifying, and confirming the proposed enlargement if he finds that the proposed enlargement is reasonable and that the proper municipal services will be rendered within a reasonable time. Ferguson v. Town of Vaiden, 242 So. 2d 124 (Miss. 1970).

A decree ratifying and approving an ordinance extending city limits which described the boundaries of the entire city as altered by the annexation, rather than describing the newly annexed area alone, sufficiently complied with the requirements of this section. Butler v. City of Gulfport, 253 Miss. 738, 179 So. 2d 3 (1965).

The fact that an appeal from a decision of city board of election commissioners involved construction of a decree of the chancery court approving an ordinance that extended city limits was not a sufficient reason for transferring the cause to the chancery court. Lippian v. Ros, 253 Miss. 325, 175 So. 2d 138 (1965).

Where chancery court was without authority, in a decree approving an ordinance enlarging the boundaries of a municipality, to defer the effective date of the ordinance, the invalid portion of the decree may be collaterally attacked by one who relies upon the valid portions of the same decree. Lippian v. Ros, 253 Miss. 325, 175 So. 2d 138 (1965).

The court may not enlarge, but may reduce the area sought to be annexed, to the extent it is found to be unreasonable. In re City of Meridian, 237 Miss. 486, 115 So. 2d 323 (1959).

In a proceeding by a city for the ratification, approval and confirmation of an ordinance extending the city's corporate limits, the court had the power to decrease the territory to be included, and was amply justified from the evidence in finding that the enlarged limit, as modified, was reasonable and was required by the public convenience and necessity. In re City of Phila., 232 Miss. 582, 100 So. 2d 100 (1958).

9. Judicial review.

City's proposed annexation, viewed through the lens of totality, was reasonable under Miss. Code Ann. § 21-1-33 because, in addition to indicia of reasonableness that objectors had conceded, it had long been providing many services to portions of the proposed annexation area, and annexation power was legislative, not judicial, so that the state supreme court declined an invitation to add yet another factor in its consideration; the area sought to be annexed was reasonably within a part of growth of the city, which needed to expand, and there was a need for zoning, overall planning, and municipal services in the proposed area. In re City of Brookhaven, — So. 2d —, 2007 Miss. LEXIS 204 (Miss. Apr. 5, 2007), opinion withdrawn by, substituted opinion en banc at 957 So. 2d 382, 2007 Miss. LEXIS 345 (Miss. 2007).

If chancellor employed correct legal standards in determining reasonableness of annexation, Supreme Court's standard of review is limited; reversal of chancellor's findings is warranted only if chancellor is manifestly wrong and his findings are not supported by substantial credible evidence. Bunch v. City of Jackson, 691 So. 2d 978 (Miss. 1997), reh'g denied, 700 So. 2d 331 (Miss. 1997).

Although it has been held that city's need to maintain or expand its tax base, especially as growth and development occurs on its perimeters, is factor to be considered when determining reasonableness of proposed annexation, Supreme Court has been very critical of annexations which are in effect "tax grabs." Bunch v. City of Jackson, 691 So. 2d 978 (Miss. 1997), reh'g denied, 700 So. 2d 331 (Miss. 1997).

Chancellor's findings in annexation case are reviewed to determine whether they are supported by substantial, credible evidence; if there is credible, conflicting evidence, Supreme Court defers to Chancery Court's findings. Burch v. Town of Mantachi, 685 So. 2d 724 (Miss. 1996).

A failure of proof on 6 of the 12 factors for determining reasonableness of an annexation would not mandate reversal as a matter of law of the chancellor's finding of reasonableness; the chancellor was required to determine reasonableness under the totality of the circumstances, employing the 12 applicable indicia of reasonableness merely as an aid to this determination. Perry v. Guion, 650 So. 2d 490 (Miss. 1995).

A chancellor's approval of an annexation was correct where he made a finding of reasonableness regarding each of the 12 factors for determining reasonableness, and there was a showing of benefits to be gained by the residents of the proposed annexation area in exchange for their city taxes. Perry v. Guion, 650 So. 2d 490 (Miss. 1995).

Chancellor was manifestly wrong in finding entire annexation to be unreasonable, and should have denied annexation of those areas for which annexation would be unreasonable, and allowed annexation of remaining areas, where chancellor relied too heavily on highly speculative evidence when he included an 8.3 million dollar contingent bond liability in computing city's financial ability to fund annexation. City of Greenville v. Farmers, Inc., 513 So. 2d 932 (Miss. 1987).

Evidence was not sufficient to justify chancellor's finding that city accountant testified that without MP & L plant, annexation was not feasible, where record revealed that city accountant only admitted that loss of MP & L would adversely affect city's bonding capacity and would significantly affect feasibility of annexation. City of Greenville v. Farmers, Inc., 513 So. 2d 932 (Miss. 1987).

Supreme Court has authority, in appropriate case on appeal, to modify chancellor's order concerning annexation. City of Greenville v. Farmers, Inc., 513 So. 2d 932 (Miss. 1987).

As a reviewing court, the Supreme Court is limited to a determination of whether the chancellors finding on the question of reasonableness is manifestly wrong, and, where there is conflicting evidence, it will give great deference to the chancellor's findings. McElhaney v. City of Horn Lake, 501 So. 2d 401 (Miss. 1987).

In an action by a city to annex a utility district, the trial court properly found that the city had failed to prove that the annexation was reasonable where the evidence was sufficient to support the trial court's findings that the city had no existing need for expansion, that a flood plain was a natural barrier between the city and the area sought to be annexed, and that the area proposed to be annexed had adequate public services. Horn Lake v. Renfro, 365 So. 2d 623 (Miss. 1978).

On an application to obtain the court's approval of a proposed annexation, the city has the burden of showing it to be reasonable, and if the chancellor's finding of reasonableness or unreasonableness is supported by substantial evidence, the supreme court will not disturb it. In re City of Forest, 247 Miss. 340, 153 So. 2d 688 (1963).

Question of reasonableness of enlargement of municipality is a judicial question and determination is a proper exercise of judicial function. Ritchie v. City of Brookhaven, 217 Miss. 876, 65 So. 2d 832 (1953).

10. Time limitations.

It was error for a chancellor to order a city to file a supplemental preclearance request with the United States Attorney General under § 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C.S. § 1973c, because whether and how to initiate or to continue litigation was a matter of discretion for any governmental body, but because, under both Miss. Code Ann. § 21-1-33 and Miss. Code Ann. § 21-1-21, a chancellor's decree went into effect 10 days after an appeal was decided, and the city had not requested supersedeas, the city's notice of appeal did not stay the judgment of the chancery court and prevent the city from being held in contempt. The judgment was not automatically stayed by Miss. Code Ann. § 21-1-33. City of Grenada v. Marascalco (In re Contraction, Exclusion & Deannexation of Certain Areas), 876 So. 2d 995 (Miss. 2004).

11. Under former law.

Where the mayor and aldermen of the city of Louisville by adoption of an ordinance proposing to add new territory to the city of Louisville, adjudicated that the extension was reasonable, the burden was upon the objectors to overturn such adjudication and show the extension to be unreasonable. Ball v. City of Louisville, 218 Miss. 867, 56 So. 2d 4 (1952).

Testimony that acquisition of new industries would, by furnishing employment to substantial number of workers, increase both population and extent of additional services is relevant and competent to issue of relative advantage and disadvantage upon which issue of reasonableness is to be resolved. Nicholson v. Town of Booneville, 208 Miss. 800, 45 So. 2d 594 (1950).

On the issue of ability of town to furnish improvements, jury may assume that proper municipal assessment will greatly exceed average of assessment of property in new area as shown on state and county assessment rolls prior to its annexation to town. Nicholson v. Town of Booneville, 208 Miss. 800, 45 So. 2d 594 (1950).

One who challenges validity of ordinance of extension of city boundaries has duty of supporting his pleading with preponderating evidence establishing ground of challenge to be true in fact as stated in plea. Vail v. City of Jackson, 206 Miss. 299, 40 So. 2d 151 (1949).

On the issue whether a proposed extension is reasonable or unreasonable, the burden of proof is upon the contestants. Walker v. Town of Waynesboro, 202 Miss. 830, 32 So. 2d 455 (1947).

That some part of such territory is low and marshy and other parts vacant, and that many persons living thereon have not consented to the extension, is not of consequence. Forbes v. Mayor of Meridian, 86 Miss. 243, 38 So. 676 (1905).

The taxing of property proposed to be taken into municipal limits by an extension thereof is not the taking or damaging of property without due process of law. Forbes v. Mayor of Meridian, 86 Miss. 243, 38 So. 676 (1905).

An extension of the limits of a municipality is reasonable where it is necessary for the protection of health that the territory in question should be included within the municipal limits. Forbes v. Mayor of Meridian, 86 Miss. 243, 38 So. 676 (1905).

The fact that property owners would have to pay additional taxes if their property is included in such extension is no reason why the property should not be included where it would derive benefits from the municipality in the way of lower insurance rates, etc. Forbes v. Mayor of Meridian, 86 Miss. 243, 38 So. 676 (1905).

ATTORNEY GENERAL OPINIONS

Although Miss. Code Section 21-1-33 provides that effective date of annexation ordinance is ten days from final determination of appeal from decree approving ordinance, under federal law annexations are not effective for election or voting purposes until federal preclearance is obtained under Section 5 of Voting Rights Act of 1965. Hewes, Mar. 5, 1993, A.G. Op. #92-0969.

Municipality is obligated under Miss. Code Section 21-1-33 to spend public funds to provide reasonable public and municipal services within reasonable time to citizens in annexed area. Keenum, Mar. 10, 1993, A.G. Op. #93-0121.

An annexation is final and effective for all purposes 10 days after issuance of the decree by the chancery court, or 10 days after final determination of an appeal, except that citizens residing in an annexed area may not participate in future municipal elections as electors or as candidates, unless and until pre-clearance by the U.S. Department of Justice is obtained pursuant to Section 5 of the Voting Rights Act. Mallette, March 2, 2007, A.G. Op. #07-00096, 2007 Miss. AG LEXIS 72, modifying Rafferty, November 27, 2006, A.G. Op. #06-00598, 2006 Miss. AG LEXIS 428, as to the effective date of annexation for all purposes other than voting and candidacy.

RESEARCH REFERENCES

ALR. Right of one governmental subdivision to challenge annexation proceedings by another such subdivision. 17 A.L.R.5th 195.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 51, 52 et seq.

18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, etc., Form 14 (annexation, petition to confirm).

2 Am. Jur. Proof of Facts, Boundaries, Proof No. 2 (location of boundaries generally).

7 Am. Jur. Proof of Facts, Maps, etc., Proof No. 1 (foundation for admission of map or diagram).

Law Reviews. 1978 Mississippi Supreme Court Review: Administrative Law. 50 Miss. L. J. 11, March 1979.

1989 Mississippi Supreme Court Review: Annexation. 59 Miss. L. J. 930, Winter, 1989.

§ 21-1-35. Costs.

In the event no objection is made to the petition for the enlargement or contraction of the municipal boundaries, the municipality shall be taxed with all costs of the proceedings. In the event objection is made, such costs may be taxed in such manner as the chancellor shall determine to be equitable pursuant to the Mississippi Rules of Civil Procedure. In the event of an appeal from the judgment of the chancellor, the costs incurred in the appeal shall be taxed against the appellant if the judgment be affirmed, and against the appellee if the judgment be reversed.

SOURCES: Codes, 1942, § 3374-16; Laws, 1950, ch. 491, § 16; Laws, 1991, ch. 573, § 107, eff from and after July 1, 1991.

Cross References — Imposition of costs pursuant to the Mississippi Rules of Civil Procedure, see Miss. R. Civ. P. 54.

JUDICIAL DECISIONS

1. In general.

Upon affirmance, the cost in an annexation appeal would be taxed against the appellants. Dodd v. City of Jackson, 238 Miss. 372, 118 So. 2d 319 (1960).

§ 21-1-37. Appeal.

If the municipality or any other interested person who was a party to the proceedings in the chancery court be aggrieved by the decree of the chancellor, then such municipality or other person may prosecute an appeal therefrom within the time and in the manner and with like effect as is provided in Section 21-1-21 in the case of appeals from the decree of the chancellor with regard to the creation of a municipal corporation.

SOURCES: Codes, 1892, § 2913; 1906, §§ 3303, 3304; Hemingway's 1917, §§ 5799, 5800; 1930, §§ 2373, 2374; 1942, § 3374-14; Laws, 1950, ch. 491, § 14, eff from and after July 1, 1950.

Cross References — Right of appeal to circuit court in all matters except bond issuance or sale, see § 11-51-75.

Appeal with regard to the creation of a municipal corporation, see § 21-1-21.

Applicability of Mississippi Rules of Civil Procedure to proceedings relative to creation or alteration of municipal boundaries, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2. Time limitations.
3.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

The statutory 10-day period for appeal from a chancery decree deannexing territory from a city was not a true statute of limitations in the sense that such a statute fixes the interval between the time of accrual of a right and the time allowed for commencement of an action to enforce the right. As the brevity of the period in itself showed, it was instead merely a procedural limitation on the parties' use of appellate process in a municipal deannexation proceeding, and it was not a limitation on the right to bring a civil rights action in federal court based on an alleged abuse of the statutory deannexation procedure. Franklin v. City of Marks, 439 F.2d 665 (5th Cir. 1971).

The filing of a $500 cost bond by a party appealing to the Supreme Court of Mississippi from a decree confirming a municipal ordinance extending the city limits does not operate as a supersedeas where, following an unsuccessful appeal to that court, the appellant filed a petition for certiorari in the Supreme Court of the United States. Bridges v. City of Biloxi, 253 Miss. 812, 178 So. 2d 683 (1965), motion overruled, 253 Miss. 812, 180 So. 2d 154 (1965), motion overruled, 253 Miss. 812, 180 So. 2d 641 (1965), appeal dismissed, 383 U.S. 574, 86 S. Ct. 1077, 16 L. Ed. 2d 106 (1966).

Since the statutes give an interested party a right to appeal in annexation proceeding upon furnishing a good bond in the sum of $500, and to have such bond operate as a supersedeas, the chancellor had no authority to require bonds in excess of that amount, notwithstanding that such bonds were insufficient to assure the payment of accrued costs on appeal. Dodd v. City of Jackson, 238 Miss. 372, 118 So. 2d 319 (1960).

Since the two $500 bonds were sufficient to perfect an appeal in an annexation proceeding, the $5,000 bond, erroneously required by the chancellor, would be treated as surplusage and discharged, thereby releasing the sureties thereon. Dodd v. City of Jackson, 238 Miss. 372, 118 So. 2d 319 (1960).

In a proceeding to approve an ordinance extending the corporate limits of a city, where the final decree was dated Nov. 12, 1955, in vacation, and it was not entered upon the minutes of the court until November 16, 1955, and it was not shown upon the docket of the court until November 16, 1955, an appeal bond which was filed on November 25, 1955, was within the ten days provided for appeal by the statute. Spears v. City of Oxford, 227 Miss. 801, 87 So. 2d 61 (1956).

2. Time limitations.

It was error for a chancellor to order a city to file a supplemental preclearance request with the United States Attorney General under § 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C.S. § 1973c, because whether and how to initiate or to continue litigation was a matter of discretion for any governmental body, but because, under both Miss. Code Ann. § 21-1-33 and Miss. Code Ann. § 21-1-21, a chancellor's decree went into effect 10 days after an appeal was decided, and the city had not requested supersedeas, the city's notice of appeal did not stay the judgment of the chancery court and prevent the city from being held in contempt. The judgment was not automatically stayed by Miss. Code Ann. § 21-1-33. City of Grenada v. Marascalco (In re Contraction, Exclusion & Deannexation of Certain Areas), 876 So. 2d 995 (Miss. 2004).

3.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

Code 1942, § 1163 had no application in an appeal in an annexation proceeding. Dodd v. City of Jackson, 238 Miss. 372, 118 So. 2d 319 (1960).

Where the board of mayor and aldermen of city of Louisville, by passage of the ordinance proposing to add the new territory, adjudicated that the extension was reasonable and also where the chancellor held that the objectors failed to show the extension to be unreasonable, the Supreme Court will not overrule this action without clear ground or reason of justification. Ball v. City of Louisville, 218 Miss. 867, 56 So. 2d 4 (1952).

On appeal from ordinance enlarging geographical area of town from 800 acres to 1237 acres, issue of reasonableness of ordinance is for jury and its verdict upholding ordinance is not without substantial support where record on behalf of objectors relates chiefly to disinclination of citizens in added area to be burdened with additional taxes and their doubts that city will furnish benefits commensurate with burdens placed upon them, and testimony on behalf of city shows purpose and ability to furnish new area with street improvements, water and sewerage facilities, police and fire protection, and garbage disposal. Nicholson v. Town of Booneville, 208 Miss. 800, 45 So. 2d 594 (1950).

On appeal from ordinance enlarging geographical area of town, jury has right to take into account practical necessity of extending new improvements gradually and probability that existing bond issues will be reduced during reasonable period of extension so that ultimately entire new area will be supplied reasonably. Nicholson v. Town of Booneville, 208 Miss. 800, 45 So. 2d 594 (1950).

On appeal from ordinance enlarging geographical area of town, light and water utilities furnished by private corporations but in conjunction with aid rendered by town and under its supervision, can be credited to town as showing ability of town to furnish these improvements. Nicholson v. Town of Booneville, 208 Miss. 800, 45 So. 2d 594 (1950).

Purpose and intent of this section is for speedy disposition of appeal involving municipal expansion and Code 1942, § 1519, providing that no issue of fact shall be tried before next succeeding term after issue is made up unless defendant has been personally served with process for thirty days before return-date, has no application to appeals under this section. Vail v. City of Jackson, 206 Miss. 299, 40 So. 2d 151 (1949).

Proposed extension that is prohibited by this section for one year is extension by ordinance that is adjudged unreasonable, and this section does not prohibit within year new extension ordinance that is in no way similar to that found unreasonable; and city may include in subsequent ordinance any part of lands included in ordinance previously declared invalid. Vail v. City of Jackson, 206 Miss. 299, 40 So. 2d 151 (1949).

On appeal to circuit court from ordinance extending municipal boundaries, reasonableness of ordinance is issue to be determined and need of streets, if any, is only one circumstance among many to be considered by jury in arriving at conclusion upon whether or not ordinance is reasonable. Neely v. City of Charleston, 204 Miss. 360, 37 So. 2d 495 (1948).

The necessary and inevitable increase in taxation on the property in the new area within extended municipal limits is not a proper subject of testimony on appeal where the actual or probable city assessments are not shown so that it can be determined whether the increase would be so disproportionate to the compensating benefits as to become unreasonable. Kennedy v. City of Kosciusko, 203 Miss. 4, 33 So. 2d 285 (1948).

Tender by the contestants of the issue of reasonableness vel non is sufficiently met by a general issue plea. Walker v. Town of Waynesboro, 202 Miss. 830, 32 So. 2d 455 (1947).

Extension of the limits of a municipality was sustained where the testimony of contestants disclosed chiefly their personal reactions and their opinions that no substantial benefits would probably accrue to them, whereas the entire record sufficiently revealed a purpose toward and a probability of benefit both to the citizens of the old and of the new areas. Walker v. Town of Waynesboro, 202 Miss. 830, 32 So. 2d 455 (1947).

On appeal from ordinance, court could not consider question of loss of power to tax, on part of school district, territory included in municipality under ordinance.

City of Pass Christian v. Town of Long Beach, 157 Miss. 778, 128 So. 554 (1930).

Proof of publication held not requisite part of record on appeal from ordinance extending city limits. City of Pass Christian v. Town of Long Beach, 157 Miss. 778, 128 So. 554 (1930).

Taxpayer failing to appeal from ordinance of annexation was estopped to question validity of ordinance in collateral proceeding. City of Greenwood v. Humphreys, 157 Miss. 879, 127 So. 694 (1930), error overruled, 157 Miss. 889, 128 So. 885 (1930).

An ordinance extending the territory of a town cannot be collaterally attacked by one who has waived his rights of appeal. Sanders v. City of Starkville, 128 Miss. 742, 91 So. 422 (1922).

Where on appeal there was no conflict in the evidence which conclusively showed the reasonableness of the ordinance, a peremptory instruction for the city was correct. Kraetzer Cured Lumber Co. v. Moorhead, 118 Miss. 736, 80 So. 4 (1918); Gregory v. Amory, 112 Miss. 604, 73 So. 614 (1917).

A municipality operating under a commission form of government ordering a referendum is held not to supersede an appeal from such ordinance. Gregory v. City of Amory, 112 Miss. 604, 73 So. 614 (1917).

The question of the return of revenue which the municipality may receive from the territory proposed to be annexed is not a criterion by which to determine the reasonableness or unreasonableness of the ordinance. Forbes v. Mayor of Meridian, 86 Miss. 243, 38 So. 676 (1905).

Appeal under § 3380, Code of 1942 is tried de novo. Yerger v. Town of Greenwood, 77 Miss. 378, 27 So. 620 (1900).

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 70, 83, 84.

Law Reviews. 1978 Mississippi Supreme Court Review: Administrative Law. 50 Miss. L. J. 11, March 1979.

§ 21-1-39. Copy of decree sent to secretary of state.

Whenever the corporate limits of any municipality shall be enlarged or contracted, as herein provided, the chancery clerk shall, after the expiration of ten days from the date of such decree if no appeal be taken therefrom, forward to the secretary of state a certified copy of such decree, which shall be filed in the office of the secretary of state and shall remain a permanent record thereof. In the event an appeal be taken from such decree and such decree is affirmed, then the certified copy thereof shall be forwarded to the secretary of state within ten days after receipt of the mandate from the supreme court notifying the clerk of such affirmance.

SOURCES: Codes, 1942, § 3374-15; Laws, 1950, ch. 491, § 15, eff from and after July 1, 1950.

Cross References — Appeal, see § 21-1-37.
Filing of decree enlarging or contracting boundaries of municipality, see § 21-1-47.

§ 21-1-41. Chancery clerk to be furnished map or plat of alterations.

In all cases where the limits of a municipality are enlarged or contracted the municipal authorities shall furnish to the chancery clerk a map or plat of the boundaries of the municipality as altered. Such map or plat shall be recorded in the official plat book of the county.

SOURCES: Codes, 1942, § 3374-15; Laws, 1950, ch. 491, § 15, eff from and after July 1, 1950.

Cross References — Filing of map or plat showing altered boundaries, see § 21-1-47.

COMBINATION

SEC.	
21-1-43.	Combining of municipalities.

§ 21-1-43. Combining of municipalities.

Any two or more cities or towns being adjacent or situated sufficiently near to each other may combine into and become one municipality in the same manner as is provided for the enlargement or contraction of municipal boundaries. It shall be necessary for the governing authorities of each municipality to adopt the ordinance with regard thereto in the same manner as is provided in Section 21-1-27 with regard to the enlargement or contraction of municipal boundaries. It shall also be necessary that such municipal authorities shall file a joint petition in the proper chancery court, and thereafter proceedings shall be had in the same manner as is provided in cases of enlargement or contraction of municipal boundaries. The ordinance and the petition filed with the chancery court shall state the name that shall be given to the municipality to be formed. In the event of the consolidation of two or more municipalities into one as herein provided, the decree of the chancellor shall correctly classify the municipality so formed in accordance with the facts, based upon the total population of all of such municipalities as shown by the latest available federal census. When said consolidation shall have become final and operative, all of such municipalities shall be merged into one under the name set forth in the ordinances adopted by the governing authorities of the municipalities so consolidated. The governing authorities of all the municipalities so consolidated shall become members of the governing authority of the municipality so formed until the next regular election, when the proper number of members of the governing authority shall be elected as provided by law, and the mayor or chief executive officer of the largest municipality, according to population, shall become the mayor or chief executive officer of the municipality so formed. The assessments and levies for ad valorem taxation in force at the time of the consolidation of such municipalities for the territory of each municipality shall be the assessment and levy upon which taxes shall be collected for the then current fiscal year, but in all other respects the existing laws and ordinances of the largest municipality, according to population, shall be operative throughout the enlarged limits.

Nothing in this section shall authorize the combination of two or more villages unless such villages shall have a combined population of five hundred or more, according to the latest available federal census.

SOURCES: Codes, 1892, § 2912a; 1906, § 3301; Hemingway's 1917, § 5797; 1930, § 2371; 1942, § 3374-17; Laws, 1902, ch. 103; Laws, 1910, ch. 230; Laws, 1950, ch. 491, § 17, eff from and after July 1, 1950.

Cross References — Judicial definitions and illustrations generally, see §§ 1-3-1 et seq.

Classification of municipalities, see § 21-1-1.

Naming or renaming municipal corporations, see §§ 21-1-5, 21-1-7.

Extension or contraction of corporate boundaries, see §§ 21-1-27 et seq.

Applicability of Mississippi Rules of Civil Procedure to proceedings relative to creation or alteration of municipal boundaries, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

Municipal ordinance extending limits to include territory of existing town without its consent is subject to collateral attack. City of Pascagoula v. Krebs, 151 Miss. 676, 118 So. 286 (1928).

A former statutory provision (§ 3312, Code of 1906, as amended by Laws of 1908, Ch. 187), gave no authority for one municipality to absorb another municipality, but merely provided a time when, if the absorption should occur, the absorbed municipality should stand abolished, and Code 1906, § 3301 (Code 1942, § 3376) and the other cognate sections of the chapter on municipalities provided alone for power in a municipality to incorporate, by extension of its limits, adjacent unincorporated territory. Village of Gandsi v. Town of Seminary, 95 Miss. 315, 48 So. 908 (1909).

RESEARCH REFERENCES

ALR. Validity of municipal bond issue as against owners of property annexation of which to municipality became effective after date of election at which issue was approved by voters. 10 A.L.R.2d 559.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 84, 85.

18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, etc., Form 31 (petition for consolidation of cities).

CJS. 62 C.J.S., Municipal Corporations §§ 87-99.

INCLUSION OR EXCLUSION FROM EXISTING MUNICIPALITY

SEC.
21-1-45. Electors' option to be included in or excluded from existing municipality; preparing and filing of petition.
21-1-47. Proceedings in chancery court.

§ 21-1-45. Electors' option to be included in or excluded from existing municipality; preparing and filing of petition.

The qualified electors of any territory contiguous to and adjoining any existing municipality and the qualified electors of any territory which is a part of an existing municipality, may be included in or excluded from such municipality, as the case may be, in the manner hereinafter provided.

Whenever the inhabitants of any incorporated territory adjacent to any municipality shall desire to be included therein, and whenever the inhabitants of any territory which is a part of an existing municipality shall desire to be excluded therefrom, they shall prepare a petition and file same in the chancery court of the county in which such municipality is located, which said petition shall be signed by at least two-thirds of the qualified electors residing in the territory proposed to be included in or excluded from such municipality. Said petition shall describe accurately the metes and bounds of the territory proposed to be included in or excluded from such municipality, shall set forth the reasons why the public convenience and necessity would be served by such territory being included in or excluded from such municipality, as the case may be, and shall be sworn to by one or more of the petitioners. In all cases, there shall be attached to such petition a plat of the municipal boundaries as same will exist in the event the territory in question is included in or excluded from such municipality. No territory may be so excluded from a municipality within two years from the time that such territory was incorporated into such municipality, and no territory may be so excluded if it would wholly separate any territory not so excluded from the remainder of the municipality. No petition for the inclusion or exclusion of any territory under this section shall be filed within two years from the date of any adverse determination of any proceedings originated hereinafter under this chapter for the inclusion or exclusion of the same territory.

SOURCES: Codes, 1942, § 3374-19; Laws, 1950, ch. 491, § 19, eff from and after July 1, 1950.

JUDICIAL DECISIONS

1. In general.
2. Review.

1. In general.

Although Mississippi Code § 21-1-45 contains no dispositive definition for the term "qualified electors," it would be inappropriate to adopt the definition of that term found in Mississippi Code § 23-5-85 [Repealed], and to employ the entire panoply of rules applicable to public elections to a proceeding to obtain annexation of unincorporated area by an adjacent existing municipality. Schmidt v. City of Jackson, 494 So. 2d 348 (Miss. 1986).

The legislature has prescribed means by which persons residing in an unincorporated area may obtain annexation to a municipality adjacent to the area in which they live. Schmidt v. City of Jackson, 494 So. 2d 348 (Miss. 1986).

Persons living within an incorporated territory at the time of petitioning, as well as persons living within an unincorporated area, may upon a proper showing enjoy the remedy afforded by Mississippi Code § 21-1-45. Schmidt v. City of Jackson, 494 So. 2d 348 (Miss. 1986).

Citizens living in an unincorporated area which is a territory contiguous to and adjoining an existing municipality may proceed under Mississippi Code §§ 21-1-45 and 21-1-47 to obtain annexation by the municipality. Schmidt v. City of Jackson, 494 So. 2d 348 (Miss. 1986).

The allegations of a complaint filed by residents of an unincorporated area seeking to obtain annexation by an adjacent existing municipality were sufficient to confer upon the chancery court authority to proceed in the matter. Schmidt v. City of Jackson, 494 So. 2d 348 (Miss. 1986).

For the purposes of an action to obtain annexation of an unincorporated area by an adjacent existing municipality, the question of whether the two-thirds requirement has been met must be determined by ascertaining the number of persons living in the area to be annexed who, on the date the complaint was filed, were registered voters in the area, and then determining whether two-thirds of that number have signed the complaint. Schmidt v. City of Jackson, 494 So. 2d 348 (Miss. 1986).

Where town residents filed a cross-petition seeking to be excluded from the existing corporate limits in a proceeding for confirmation of an ordinance extending the city boundaries, the cross-petition was properly dismissed; a proceeding by inhabitants of any territory which is part of an existing municipality to be excluded therefrom is entirely separate, apart from, and not germane to the proceeding of a municipality to enlarge or contract its boundaries. Ferguson v. Town of Vaiden, 242 So. 2d 124 (Miss. 1970).

2. Review.

Because petitioner was the only qualified elector residing within the proposed inclusion area at the time petitions for inclusion were filed, the chancellor was correct in finding the two-thirds requirement for qualified electors of any area adjacent to an existing municipality to file a petition for inclusion, as set out in Miss. Code Ann. § 21-1-45, was met. Farrell v. Babb (in re Inclusion Into Oxford), — So. 3d —, 2014 Miss. LEXIS 323 (Miss. July 17, 2014).

Where, in a deannexation proceeding, a city relied on only one of the 12 indicia of reasonableness applicable to either annexation or deannexation under Miss. Code Ann. §§ 21-1-45, 21-1-47, and objectors presented evidence on all 12, under its limited standard of review of such proceedings, the Supreme Court of Mississippi determined that the chancellor's finding on deannexation was correct. City of Grenada v. Marascalco (In re Contraction, Exclusion & Deannexation of Certain Areas), 876 So. 2d 995 (Miss. 2004).

RESEARCH REFERENCES

ALR. Right of one governmental subdivision to challenge annexation proceedings by another such subdivision. 17 A.L.R.5th 195.

Refusal of municipality to annex impoverished area as violative of federal law. 22 A.L.R. Fed. 272.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 86-90.

18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, etc., Forms 15, 16 (ordinance extending city limits invalid, petition).

18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, etc., Form 18 (notice of hearing on petition to exclude property from annexation).

18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, Counties, and Other Political Subdivisions, Form 45.1 (Petition or application — To disconnect property from municipality — Multiple tracts and owners).

CJS. 62 C.J.S., Municipal Corporations § 100-103.

§ 21-1-47. Proceedings in chancery court.

Upon the filing of such a petition, all of the proceedings of this chapter with regard to proceedings in the chancery court upon petitions for the creation, enlargement, and contraction of municipalities shall apply in like manner thereto. Notice of the filing of such petition and the time for the hearing shall be given in the manner and for the length of time as is required in cases of proceedings for the creation, enlargement, or contraction of a municipality. Any parties to the proceedings aggrieved by the decree of the chancellor may appeal therefrom in the same manner and within the same time as is provided in cases of decrees on petitions involving the creation, enlargement or contraction of a municipal corporation. In all proceedings under this section, however, the municipal corporation involved shall be made a party to such proceedings and shall be served with process in the manner provided by law at least thirty days prior to the date of the hearing. If the chancellor finds from the evidence that the proposed inclusion or exclusion is reasonable and is required by the public convenience and necessity, then he shall enter a decree declaring the territory in question to be included in or excluded from the municipality, as the case may be, which decree shall contain an adjudication of the boundaries of the municipality as altered. In so doing, the chancellor shall have the right and power to modify the proposed enlargement or contraction by decreasing the territory to be included in or excluded from the municipality, as the case may be. If the chancellor shall find from the evidence that the proposed inclusion or exclusion, as the case may be, is unreasonable and is not required by the public convenience and necessity, then he shall enter a decree denying same. In any event, the decree of the chancellor shall become effective after the passage of ten days from the date thereof or, in the event an appeal is taken therefrom, within ten days from the final determination of such appeal. In all cases where territory is included in or excluded from a municipality under the provisions hereof, a certified copy of the decree of the chancellor shall be sent to the Secretary of State and a map or plat of the boundaries of the municipality as altered shall be filed with the chancery clerk, all as provided in Sections 21-1-39 and 21-1-41.

SOURCES: Codes, 1942, § 3374-20; Laws, 1950, ch. 491, § 20, eff from and after July 1, 1950.

Cross References — Applicability of Mississippi Rules of Civil Procedure to proceedings relative to creation or alteration of municipal boundaries, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

1. In general.
2. Review.

1. In general.

The legislature has prescribed means by which persons residing in an unincorporated area may obtain annexation to a municipality adjacent to the area in which they live. Schmidt v. City of Jackson, 494 So. 2d 348 (Miss. 1986).

Citizens living in an unincorporated area which is a territory contiguous to and adjoining an existing municipality may proceed under Mississippi Code §§ 21-1-45 and 21-1-47 to obtain annexation by the municipality. Schmidt v. City of Jackson, 494 So. 2d 348 (Miss. 1986).

2. Review.

Where, in a deannexation proceeding, a City relied on only one of the 12 indicia of reasonableness applicable to either annexation or deannexation under Miss. Code Ann. §§ 21-1-45, 21-1-47, and objectors presented evidence on all 12, under its limited standard of review of such proceedings, the Supreme Court of Mississippi determined that the chancellor's finding on deannexation was correct. City of Grenada v. Marascalco (In re Contraction, Exclusion & Deannexation of Certain Areas), 876 So. 2d 995 (Miss. 2004).

RESEARCH REFERENCES

ALR. Right of one governmental subdivision to challenge annexation proceedings by another such subdivision. 17 A.L.R.5th 195.

Am Jur. 18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, Counties, and Other Political Subdivisions, Form 45.1 (Petition or application — To disconnect property from municipality — Multiple tracts and owners).

ABOLITION

Sec.	
21-1-49.	Automatic by virtue of census results.
21-1-51.	Automatic by failure to hold official meetings or municipal general election of officers.
21-1-53.	Voluntary.
21-1-55.	Records of municipality to be filed with chancery clerk.
21-1-57.	Payment of indebtedness of municipality.

§ 21-1-49. Automatic by virtue of census results.

In the event any census taken under an act of congress shall show that any municipality contains less than fifty (50) inhabitants, then such municipality shall be automatically abolished and all its rights and powers as a municipal corporation shall thereupon cease. In such cases it shall be the duty of the secretary of state to make an appropriate notation on the records of such municipal corporation in his office showing that such municipal corporation has been abolished because of having less than fifty (50) inhabitants, and he shall forthwith send a notice to the municipal authorities advising them of such fact, and shall send a copy of the notice to the chancery clerk of the county in which such municipality is located. However, the failure of the secretary of state to make such notation or to send such notice shall not prevent the abolition of such municipal corporation as is herein provided, but such abolition shall result automatically from the fact that the census shows that such municipal corporation has less than fifty (50) inhabitants. Any municipality having not less than fifty (50) inhabitants and having heretofore been abolished under the federal census of 1970 by operation of language formerly employed in this section providing for such abolition should a municipality contain less than ninety-two (92) inhabitants, is hereby restored to all rights and privileges as a municipality after the most recent governing authority of the municipality gives notice to the secretary of state that such municipality desires to be restored to all rights and privileges as a municipality.

SOURCES: Codes, 1892, § 2919; 1906, § 3310; Hemingway's 1917, § 5806; 1930, § 2381; 1942, § 3374-21; Laws, 1920, ch. 319; Laws, 1950, ch. 491, § 21; Laws, 1962, ch. 536; Laws, 1973, ch. 318, § 1; Laws, 1981, ch. 513, § 1, eff from and after passage (approved April 20, 1981).

Cross References — Definition of "municipality" for purpose of ad valorem taxes and homestead exemptions, see § 27-33-11.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 93-95.

CJS. 62 C.J.S., Municipal Corporations §§ 131-138.

§ 21-1-51. Automatic by failure to hold official meetings or municipal general election of officers.

Whenever the municipal authorities of any municipality shall fail to hold official meetings for a period of twelve consecutive months, or whenever municipal general elections of officers shall not be held in any municipal corporation as required by law upon two consecutive occasions, then such municipal corporation shall be automatically abolished, and its rights and powers as a municipal corporation shall cease and determine. The official minute book of the municipality shall be the sole evidence of whether any official meetings were held in such municipal corporation during any twelve month period, except in cases of fraud or falsification, and abolition of the municipality shall result automatically where the official minute book fails to show a record of any official meetings during such twelve month period. In cases of the failure to hold municipal general elections of officers on two consecutive occasions, the records in the office of the secretary of state as to whether or not returns of such elections were made to him as required by law shall be the sole evidence of whether such elections were held, except in cases of fraud, falsification, loss of such records or clear and patent mistake, oversight, or omission.

SOURCES: Codes, 1892, § 2919; 1906, § 3310; Hemingway's 1917, § 5807; 1930, § 2383; 1942, § 3374-22; Laws, 1910, ch. 199; Laws, 1950, ch. 491, § 22, eff from and after July 1, 1950.

Cross References — Definition of "municipality" for purpose of ad valorem taxes and homestead exemptions, see § 27-33-11.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 95.

CJS. 62 C.J.S., Municipal Corporations §§ 134-136.

§ 21-1-53. Voluntary.

Any municipal corporation having a population of less than one thousand inhabitants, according to the latest available federal census, may be abolished and dissolved in the manner hereinafter provided. In order to abolish or dissolve such a municipality, the mayor and board of aldermen, or other governing authorities of the municipality, shall first adopt an ordinance declaring their intention to abolish or dissolve such municipality, which ordinance shall set forth in full the reason or reasons why such municipality should be abolished and why the public convenience and necessity would be served by the abolition thereof. When such ordinance shall have been adopted, the municipal authorities shall file a petition in the chancery court in which such municipality is located, which said petition shall recite the fact of the adoption of such ordinance and shall pray that the said municipality be abolished and dissolved as provided in such ordinance. A certified copy of said ordinance shall be attached to said petition as an exhibit thereto. All the provisions of this chapter with regard to proceedings in chancery court on petitions for the creation, enlargement and contraction of municipalities shall apply in like manner to the proceedings for the abolition of a municipal corporation. Notice of the filing of said petition and the time for the hearing thereof shall be given in the manner and for the length of time as is required in cases of petitions for the creation, enlargement or contraction of municipalities. Parties aggrieved by the decree of the chancellor may appeal from such decree in the same manner and within the same time as is provided in cases of decrees on petitions involving the creation, enlargement or contraction of a municipal corporation. If the chancellor shall find from the evidence that the proposed abolition is reasonable and will serve the public convenience and necessity, he shall enter his decree declaring the said municipal corporation to be dissolved and abolished, and said decree shall become effective after the passage of ten days from the date thereof, except in cases of appeal in which cases the decree shall become effective after the passage of ten days from the final determination of the appeal. If the chancellor shall find from the evidence that the proposed abolition is unreasonable and is not required by the public convenience and necessity, he shall enter his decree denying such abolition. The hearing provided for herein may be held either in term time or in vacation.

Whenever a municipal corporation shall be so abolished, the chancery clerk shall, after the expiration of ten days from the date of such decree, if no appeal be taken therefrom, forward to the secretary of state a certified copy of such decree, which shall be filed in the office of the Secretary of State and remain a permanent record thereof. The secretary of state shall note on his official records pertaining to such municipal corporation the fact that such corporation has been so abolished. In the event an appeal be taken from such decree and such decree be affirmed, then the certified copy thereof shall be forwarded to the secretary of state within ten days after the receipt of the mandate from the supreme court notifying the clerk of such affirmance.

SOURCES: Codes, 1892, § 2919; 1906, § 3310; Hemingway's 1917, § 5806; 1930, § 2381; 1942, §§ 3374-23, 3374-24; Laws, 1920, ch. 319; Laws, 1950, ch. 491, §§ 23, 24, eff from and after July 1, 1950.

Cross References — Judicial definitions and illustrations generally, see §§ 1-3-1 et seq.

ATTORNEY GENERAL OPINIONS

Guardian ad litem is not one of the positions specifically listed in this section and therefore does not fall under the nepotism prohibitions. Webster, Dec. 12, 2002, A.G. Op. #02-0710.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 94, 95.

18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, etc., Form 41 (petition for disincorporation of city or town).

CJS. 62 C.J.S., Municipal Corporations §§ 132, 133.

§ 21-1-55. Records of municipality to be filed with chancery clerk.

Whenever a municipality is abolished under any of the provisions of this chapter, the municipal authorities shall deliver all records of such municipality to the chancery clerk of the county in which such municipality is located and said records shall be filed in the office of the chancery clerk and be kept by him as a public record.

SOURCES: Codes, 1942, § 3374-25; Laws, 1950, ch. 491, § 25, eff from and after July 1, 1950.

Cross References — Removal and return of chancery court's files and documents, see § 9-5-165.

§ 21-1-57. Payment of indebtedness of municipality.

The abolition of a municipal corporation under any of the provisions of this chapter shall not relieve the property thereof of liability for the debts of the municipality, but the governing authorities of the municipality shall forthwith make up a statement of the indebtedness of the municipality, if any, and a statement of its assets, and shall certify the same and deliver such statement, together with the records of the municipality, to the chancery clerk of the county in which the municipality is located. The board of supervisors of the county shall levy a special tax upon the property embraced in such municipality so abolished, which shall be in force from year to year so long as may be necessary, and such tax shall be collected by the tax collector of the county. The tax collector shall deposit the funds derived from such levy in a special account in the county treasury, and the same shall be paid to the creditors of such municipality upon order and allowance of claims by the board of supervisors. When all of the indebtedness of the municipality shall have been paid, then such special levy shall be discontinued.

SOURCES: Codes, 1942, § 3374-25; Laws, 1950, ch. 491, § 25, eff from and after July 1, 1950.

Cross References — Removal and return of chancery court's files and documents, see § 9-5-165.

Chancery court clerk keeping general docket, see § 9-5-201.

Tax liability in cases of creation, enlargement of exclusion of territory, see §§ 21-1-61, 21-1-63.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, etc., Form 42 (municipal disincorporation, appointment of receiver).

INCLUSION OF STATE INSTITUTIONAL FACILITIES

Sec.	
21-1-59.	Municipalities may not incorporate state institutions without consent; effect of annexation crossing county lines on schools in annexed areas; annexations prior to March 18, 1987 ratified; municipalities authorized to enter agreements with enterprises operating certain projects provided that such municipalities not change boundaries to include project site.

§ 21-1-59. Municipalities may not incorporate state institutions without consent; effect of annexation crossing county lines on schools in annexed areas; annexations prior to March 18, 1987 ratified; municipalities authorized to enter agreements with enterprises operating certain projects provided that such municipalities not change boundaries to include project site.

(1) No municipality shall be created or shall change its boundaries so as to include within the limits of such municipality any of the buildings or grounds of any state institution, unless consent thereto shall be obtained in writing from the board of trustees of such institution or such other governing board or body as may be created for the control of such institution. Inclusion of the buildings or grounds of any state institution within the area of a municipal incorporation or expansion without the consent hereinabove required shall be voidable at the option of the affected institution within six (6) months after the institution becomes aware of the inclusion. Upon consent to inclusion within the area of a municipal incorporation or expansion, a state institution may require, subject to agreement of the municipality involved, conditions relating to land use development, zoning requirements, building codes and delivery of governmental services which shall be applicable to the buildings or grounds of the institution included in the municipality.

Provided further, that any future changes in the boundaries of a presently existing municipality which extends into or further extends into a county other than the county in which the municipality's principal office is located shall not affect the public school district located in the annexed area, unless and until consent thereto shall have first been obtained in writing from the board of trustees of the school district proposed to be partially or wholly included in the change of municipal boundaries.

Provided further, that any change in the boundaries of a presently existing municipality of any Class 1 county having two (2) judicial districts, being traversed by U.S. Highway 11 which intersects U.S. Highway 84, shall not affect the public school district located in the annexed area and shall not change the governmental unit to which the school taxes are paid, unless approved by referendum as hereinafter provided.

In the event that twenty percent (20%) of the registered voters residing within the area to be annexed by a municipality petition the governing body of such municipality for a referendum on the question of inclusion in the municipal school district within sixty (60) days of public notice of the adoption of such ordinance, such notice given in the same manner and for the same length of time as is provided in Section 21-1-15 with regard to the creation of municipal corporations, the governing body of the county in which the area to be annexed is located shall hold a referendum of all registered voters residing within the area to be annexed on the question of inclusion in the municipal school district. Approval of the ordinance shall be made by a majority vote of the qualified electors voting in said referendum to be held within ninety (90) days from the date of filing and certification of the petition provided for herein on the question of such extension or contraction. The referendum shall be held in the same manner as are other county elections.

The inclusion of buildings or grounds of any state institution within the area of a municipal incorporation or expansion in any proceedings creating a municipality or enlarging the boundaries of a municipality prior to the effective date of Senate Bill 2307, 1987 Regular Session (Chapter 359, eff March 18, 1987), is hereby ratified, confirmed and validated, regardless of whether such inclusion was in conformity with the requirements of this section at the time of such proceedings, and such inclusion shall not be void or voidable by any affected state institution on or after the effective date of Senate Bill 2307, 1987 Regular Session (Chapter 359, eff March 18, 1987). This paragraph shall not be applicable to and shall not be construed to validate the inclusion of buildings or grounds of any state institution within the area of a municipal incorporation or expansion where such inclusion or the proceedings involving such inclusion were declared invalid or void in a final adjudication of a court of competent jurisdiction prior to the effective date of Senate Bill 2307, 1987 Regular Session (Chapter 359, eff March 18, 1987), and the decision of such court was not appealed within the applicable time period for appeals from such court or was not overturned by any court to which an appeal may have been made.

(2) The governing authorities of a municipality may enter into an agreement with an enterprise operating a project as defined in Section 57-75-5(f)(iv)1, Section 57-75-5(f)(xxi) or Section 57-75-5(f)(xxviii) providing that the municipality shall not change its boundaries so as to include within the limits of such municipality the project site of such a project unless consent thereto shall be obtained in writing from the enterprise operating the project. Such

agreement may be for a period not to exceed thirty (30) years. Such agreement shall be binding on future governing authorities of such municipality.

SOURCES: Codes, 1930, § 2378; 1942, § 3374-18; Laws, 1928, ch. 29; Laws, 1950, ch. 491, § 18; Laws, 1977, ch. 379; Laws, 1978, ch. 312, § 1; Laws, 1987, ch. 359; Laws, 2000, 3rd Ex Sess, ch. 1, § 18; Laws, 2007, ch. 303, § 6; Laws, 2013, 1st Ex Sess, ch. 1, § 13, eff from and after passage (approved Apr. 28, 2013.)

Cross References — Powers and duties of the board of trustees of state institutions of higher learning, see § 37-101-15.

JUDICIAL DECISIONS

1. In general.

The chancellor properly refused to rule on the constitutionality of § 21-1-59, where the portions of the statute alleged to be unconstitutional were those portions pertaining to a county which was not part of the present lawsuit. Western Line Consol. Sch. Dist. v. Greenville Mun. Separate Sch. Dist., 433 So. 2d 954 (Miss. 1983).

This requirement does not apply to a state armory or to land on which transportation vehicles for county schools are stored and repaired. In re City of Hazlehurst, 247 Miss. 527, 153 So. 2d 809 (1963).

When there are no buildings or grounds of any state institution in area proposed to be added under extension ordinance of city, there is no reason why ordinance of city should contain adjudication that consent of state institutions within city had been obtained through their governing authorities. Vail v. City of Jackson, 206 Miss. 299, 40 So. 2d 151 (1949).

RESEARCH REFERENCES

ALR. Applicability of zoning regulations to governmental projects or activities. 53 A.L.R.5th 1.

TAX LIABILITY

Sec.
21-1-61. Tax liability in case of creation or enlargement of municipality.
21-1-63. Tax liability in case of contraction of municipality.

§ 21-1-61. Tax liability in case of creation or enlargement of municipality.

In all cases where a municipality is created or the limits of an existing municipality are enlarged under the provisions of this chapter, the property included within the municipal boundaries by such creation or enlargement shall become liable for and subject to municipal ad valorem taxation on the tax lien date next succeeding the effective date of the decree creating or enlarging such municipality.

SOURCES: Codes, 1942, § 3374-27; Laws, 1950, ch. 491, § 27, eff from and after July 1, 1950.

Cross References — Tax liability in case of contraction of territory, see § 21-1-63.

Assessor's recapitulation for added territory being kept separate from municipality generally, see § 21-33-17.

Assessment of property in added territory, see § 21-33-21.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

A city was without authority to exempt from taxation for a term of years a corporation, already established, in consideration of the corporation's agreement not to resist the extension of the boundaries of the city so as to include the property of the corporation. Robertson v. Southern Paper Co., 119 Miss. 113, 80 So. 384 (1919).

Under code provisions authorizing a municipality to levy taxes on the property within the corporate limits, "taxable according to the laws of the state," and providing that all taxable property acquired before the first day of February shall be assessed for the current year, etc., a city which, by ordinance adopted in April of a year, enlarges its corporate limits and thereby takes into the limits real estate, has no power to levy taxes on such real estate for the current year. City of Gulfport v. Todd, 92 Miss. 428, 46 So. 541 (1908).

ATTORNEY GENERAL OPINIONS

An annexation is final and effective for all purposes 10 days after issuance of the decree by the chancery court, or 10 days after final determination of an appeal, except that citizens residing in an annexed area may not participate in future municipal elections as electors or as candidates, unless and until pre-clearance by the U.S. Department of Justice is obtained pursuant to Section 5 of the Voting Rights Act. Mallette, March 2, 2007, A.G. Op. #07-00096, 2007 Miss. AG LEXIS 72, modifying Rafferty, November 27, 2006, A.G. Op. #06-00598, 2006 Miss. AG LEXIS 428, as to the effective date of annexation for all purposes other than voting and candidacy.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 96-100.

CJS. 62 C.J.S., Municipal Corporations § 108.

§ 21-1-63. Tax liability in case of contraction of municipality.

Whenever any territory of an existing municipality is excluded therefrom by a contraction of the boundaries thereof under the provisions of this chapter, and there shall be at such time outstanding bonds or other indebtedness of such municipality constituting a lien on the territory so excluded, and which indebtedness was incurred while such territory was a part of such municipality, such territory shall remain liable for its pro rata share of said indebtedness, and the governing authorities of such municipality shall have power and authority to assess the property in such territory so excluded for taxation and to levy a tax thereon for the payment of said indebtedness in the same manner and to the same extent as the property within such municipality is taxed for the payment of such indebtedness.

SOURCES: Codes, 1942, § 3374-28; Laws, 1950, ch. 491, § 28, eff from and after July 1, 1950.

Cross References — Tax liability in cases of creation or enlargement of territory, see § 21-1-61.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

The city of Vicksburg extended its boundaries in ignorance of the fact that the new boundaries included the town of "Walters" and its ordinance was therefore void and Vicksburg did not thereby become liable for the debts of said town. Fabric Fire Hose Co. v. City of Vicksburg, 117 Miss. 89, 77 So. 911 (1918).

After a dissolution of the town of "Walters" the city of Vicksburg made a valid extension to include the same territory constituting at one time the town of Walters, but this did not make Vicksburg liable for the debt of Walters. Fabric Fire Hose Co. v. City of Vicksburg, 117 Miss. 89, 77 So. 911 (1918).

Nor does the city of Vicksburg have authority to tax the property formerly in the town of Walters to pay debts of the latter. Fabric Fire Hose Co. v. City of Vicksburg, 117 Miss. 89, 77 So. 911 (1918).

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 96-100.

CJS. 62 C.J.S., Municipal Corporations § 99.

APPLICABILITY

SEC.	
21-1-65.	Applicability of chapter.

§ 21-1-65. Applicability of chapter.

This chapter shall apply to and govern the creation, enlargement, contraction, and abolition of all municipalities of this state hereafter, whether such municipality be operating under the code charter, under the commission form of government, under the council form of government, under the council-manager form of government, or under a special charter, and regardless of whether a different or special procedure be provided by any such special charter.

SOURCES: Codes, 1942, § 3374-32; Laws, 1950, ch. 491, § 32, eff from and after July 1, 1950.

Cross References — Municipalities operating under various forms of government, see §§ 21-3-1 et seq. (code charter); 21-5-1 et seq. (commission form); 21-7-1 et seq. (council form); 21-8-1 et seq. (mayor-council form); and 21-9-1 et seq. (council-manager form).

ALTERNATIVE PROCEDURE FOR INCORPORATION [REPEALED]

SEC.
21-1-67 through 21-1-79. Repealed.

§§ 21-1-67 through 21-1-79. Repealed.

Repealed by Laws, 1979, ch. 470, § 8, eff from and after July 1, 1981. [En Laws, 1979, ch. 470, §§ 1-7]

Editor's Note — Former § 21-1-67 authorized an alternative procedure for the incorporation of unincorporated territory having a population of 15,000 or more.

Former § 21-1-69 related to the preparation and filing of a petition for incorporation with the board of supervisors.

Former § 21-1-71 provided for the publication of notice of the proposed incorporation.

Former § 21-1-73 provided for a hearing by the board of supervisors on the petition for incorporation, the adoption of a resolution calling for an election on the question, the form of ballots to be used, and required the filing of a map or plat of any municipal corporation so created.

Former § 21-1-75 related to the percentage of votes required to approve the proposed incorporation, when existence of the corporation commenced, the adoption of a resolution by the board of supervisors calling for the election of municipal officers, and notice and procedure of the election.

Former § 21-1-77 provided for the election commissioner to certify to the secretary of state the creation of the municipal corporation.

Former § 21-1-79 related to the issuance of official commissions to the newly elected municipal officers, their first meeting, oaths of office, official bonds, and terms.

CHAPTER 3

Code Charters

SEC.
21-3-1. Adoption of code charter.
21-3-3. Elective officers; certain officers may be appointive.
21-3-5. Appointive officers.
21-3-7. Number of aldermen and their election.
21-3-9. Qualifications of mayor and aldermen.
21-3-11. Office of alderman or mayor vacated by removal of residence.
21-3-13. Mayor pro tempore.
21-3-15. Duties of the mayor; authority of the board of aldermen.
21-3-17. Signing of commissions and appointments; approval of bonds.
21-3-19. Regular meetings of board of aldermen; recess of meetings; quorum.
21-3-21. Special meetings of board of aldermen.
21-3-23. Duties of street commissioner.
21-3-25. Chief administrative officer.

§ 21-3-1. Adoption of code charter.

Any municipality not now operating under a “Code Charter” may acquire such charter and come under the provisions of this chapter by a majority vote of the electors therein, cast at a general or special election held for such purpose. At such election, the propositions to be voted on shall be “FOR THE CODE CHARTER” and “AGAINST THE CODE CHARTER.” If a majority of the legal votes cast are in favor of adopting the code charter, then the municipality shall be subject to and governed by all the following provisions of this chapter, and the result of the election shall be certified to the secretary of state, who shall make a record of same in his office. If a majority of the votes cast shall be against the code charter, the municipal authorities shall so enter of record, and another election submitting the question shall not be held within four years thereafter. After the rejection of the provisions of the code charter by a municipality, and until its acceptance thereof as herein provided, the corporate powers, rights and franchises thereof shall be and remain as now provided by law.

SOURCES: Codes, 1942, § 3374-34; Laws, 1950, ch. 491, § 34, eff from and after July 1, 1950.

Cross References — Classification of municipalities, see § 21-1-1.

Designation of municipalities, see § 21-1-9.

For comparable provisions under various other forms of government, see §§ 21-5-1 et seq. (commission); 21-7-1 et seq. (council); 21-8-1 et seq. (mayor-council); and 21-9-1 et seq. (council-manager).

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

Where the city charter of the city gives the board of mayor and aldermen authority to prohibit the keeping of pool and billiard rooms within the city, they may prohibit the same. City of Corinth v. Crittenden, 94 Miss. 41, 47 So. 525 (1908).

Miss. Const. 1890, §§ 80, 88, providing for general laws to create and govern municipal corporations are prospective in operation and do not repeal existing municipal charters. Therefore, section recognizing the continued existence of such charters is not unconstitutional. Lum v. City of Vicksburg, 72 Miss. 590, 18 So. 476 (1895).

Its corporate authorities having formally accepted the provisions of the Code Chapter, the city of Jackson became bound thereby, and subsequent action of the authorities purporting to rescind the resolution of acceptance, though within 12 months, was ineffectual. State v. Govan, 70 Miss. 535, 12 So. 959 (1893).

Under this section declaring that after the chapter became operative, every municipality shall be governed by its provisions but that any municipality might within 12 months, "elect not to come under the provisions hereof," power was given municipalities affirmatively to accept the provisions of the chapter and be governed thereby. Ex parte Shlomberg, 70 Miss. 47, 11 So. 721 (1892).

ATTORNEY GENERAL OPINIONS

In a municipality operating under a Mayor-Board of Alderman form of government governed by Sections 21-3-1 et seq., there is no prohibition against increasing the salary of the elected officials during a term of office. Beckett, Jan. 31, 2003, A.G. Op. #03-0038.

Under a mayor/alderman form of municipal government the day-to-day operations of the municipal police department lies with the duly appointed or elected chief of police. Redmond, Aug. 26, 2005, A.G. Op. 05-0447.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 27.

18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, etc., Forms 64, 65 (allegations of capacity of plaintiff as taxpayer, and of exercise of official functions by municipal officers).

18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, etc., Forms 131 et seq. (claims, notice and presentation).

CJS. 62 C.J.S., Municipal Corporations §§ 28, 29.

§ 21-3-3. Elective officers; certain officers may be appointive.

The elective officers of all municipalities operating under a code charter shall be the mayor, the aldermen, municipal judge, the marshal or chief of police, the tax collector, the tax assessor, and the city or town clerk. However, the governing authorities of the municipality shall have the power, by ordinance, to combine the office of clerk or marshal with the office of tax collector and/or tax assessor. Such governing authorities shall have the further power to provide that all or any of such officers, except those of mayor and aldermen, shall be appointive, in which case the marshal or chief of police, the tax collector, the tax assessor, and the city or town clerk, or such of such officers as may be made appointive, shall be appointed by the said governing authorities. Any action taken by the governing authorities to make any of such offices appointive shall be by ordinance of such municipality, and no such ordinance shall be adopted within ninety (90) days prior to any regular general election for the election of municipal officers. No such ordinance shall become effective during the term of office of any officer whose office shall be affected thereby. If any such office is made appointive, the person appointed thereto shall hold office at the pleasure of the governing authorities and may be discharged by such governing authorities at any time, either with or without cause, and it shall be discretionary with the governing authorities whether or not to require such person appointed thereto to reside within the corporate limits of the municipality in order to hold such office.

SOURCES: Codes, 1892, § 2978; 1906, § 3375; Hemingway's 1917, § 5903; 1930, § 2511; 1942, § 3374-35; Laws, 1904, ch. 156; Laws, 1910, ch. 201; Laws, 1934, ch. 315; Laws, 1950, ch. 491, § 35; Laws, 1952, chs. 362, 363; Laws, 1966, Ex Sess, ch. 42, § 1; Laws, 1985, ch. 488, eff from and after November 6, 1985 (the date the United States Attorney General interposed no objections to this amendment).

Cross References — Officers appointed by governing authorities, see § 21-3-5.
Surety bond required for certain appointed municipal officers, see § 21-15-38.
Oaths of office, see §§ 25-1-9, 25-1-11.
Civil liability of officers failing to perform duty, see § 25-1-45.
Nepotism being forbidden, see § 25-1-53.
Penalty for municipal officers failing to perform their duty, see § 97-11-37.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

This section is not inconsistent but provides that in towns and villages, the marshal shall be tax collector, and that in cities, the marshal or the clerk may be tax collector if the mayor and board of aldermen so order. Coker v. Wilkinson, 142 Miss. 1, 106 So. 886 (1926).

A marshal who is ex-officio tax collector is required to take separate oath of office and give a separate bond for each office. Coker v. Wilkinson, 142 Miss. 1, 106 So. 886 (1926).

Municipal officers have the right to hold office until the election and qualification of their successors. State ex rel. Booze v. Cresswell, 117 Miss. 795, 78 So. 770 (1918).

The office of assessor of a municipality is within the provisions of Const. 1890, § 266, providing with certain exceptions, that no person holding any office of honor or profit in his own right or as deputy under any foreign government or that of the United States, shall hold any office of honor or profit under the laws of this state. State ex rel. Kiersky v. Kelly, 80 Miss. 803, 31 So. 901 (1902).

The mayor of a municipality is not a member of the board of aldermen and under the provisions of this section has no right to vote unless there be a tie in the votes of the aldermen. Bousquet v. State, 78 Miss. 478, 29 So. 399 (1901).

It is unnecessary for a relator to have taken oath and executed bond or have offered to do so on or before the beginning of the term in order to maintain by quo warranto a contest for a municipal office with one usurping the same. State ex rel.

Bourgeois v. Laizer, 77 Miss. 146, 25 So. 153 (1899).

ATTORNEY GENERAL OPINIONS

Board of aldermen appoints required and necessary officers and employees subject to mayor's veto; these appointments are non-delegable and must be made by board as whole, or quorum thereof, in regular meeting or special meeting lawfully called for that purpose. Cates, August 8, 1990, A.G. Op. #90-0585.

No cases have held that Miss. Code Section 21-3-3 is unconstitutional, and statute is therefore valid and enforceable. Hilbun, May 12, 1993, A.G. Op. #93-0325.

Miss. Code Section 21-3-3 provides that appointed police chief serves at the will and pleasure of governing authorities. Hilbun, May 12, 1993, A.G. Op. #93-0325.

If city's civil service commission, by rule or regulation, provided procedure for covered positions to be changed to non-covered positions and that procedure was followed in enactment of 1985 amending ordinance in question, position of police chief would be an "at will" position. Perkins, March 17, 1994, A.G. Op. #94-0117.

Where a municipal judge is appointed pursuant to Section 21-23-5 at the discretion of the governing authorities, he serves at the pleasure of such governing authorities and may be discharged at any time, with or without cause. Logan, March 6, 1998, A.G. Op. #98-0079.

A member of a board of aldermen may serve without compensation. Null, January 22, 1999, A.G. Op. #99-0019.

The governing authorities of a code charter municipality may hire an individual to serve as a police chaplain and perform specific duties, such as supporting the police department, providing ministry and counsel to criminal defendants in municipal court, and providing assistance to officers in notifying next of kin when motor vehicle accidents result in death. Snyder, March 5, 1999, A.G. Op. #99-0098.

A person cannot be a qualified elector of a municipality if he or she resides outside the corporate limits. Lowe, Nov. 3, 2000, A.G. Op. #2000-0643.

A town is required to have a town marshal. Berry, Oct. 19, 2001, A.G. Op. #01-0639.

It is discretionary with the governing authorities whether or not to require an appointed clerk to reside within the corporate limits of the municipality in order to hold the position, and this also applies to an appointed police chief. Collins, Nov. 9, 2001, A.G. Op. #01-0682.

The governing authorities of a code charter municipality have the authority to make the office of police chief appointive by ordinance. Littleton, III, Nov. 30, 2001, A.G. Op. #01-0706.

A mayor may suspend employees with pay, but only the board of aldermen by official action in the minutes may suspend employees without pay. Gerhart, Mar. 8, 2002, A.G. Op. #02-0056.

Police chiefs in code charter municipalities are elected, and the governing authorities have the authority to provide by ordinance that the police chief will be appointed; the board of aldermen has the statutory duty to hire and fire police officers and may review the personnel files of police officers in code charter municipalities, whether the police chief is elected or appointed. Davis, July 19, 2002, A.G. Op. #02-0396.

The separation of powers doctrine prohibits a person from serving simultaneously as a justice court judge and as a city clerk. Byrd, Mar. 28, 2003, A.G. Op. #03-0119.

The next succeeding Board of Aldermen following a regular general election would have the full authority to hire an individual of their choosing as city clerk. There is no general prohibition against hiring the individual who previously held that position by virtue of being elected. Carter, July 30, 2003, A.G. Op. 03-0400.

There are no statutory qualifications to hold the position of appointed municipal police chief. Bankston, Aug. 27, 2004, A.G. Op. 04-0427.

All code charter municipalities with the mayor-aldermen form of government are required to have a chief of police or marshall. Davis, Oct. 29, 2004, A.G. Op. 04-0522.

Governing authorities of a municipality may not enter into an employment contract for a specified period of time. Rule, Apr. 8, 2005, A.G. Op. 05-0156.

Pursuant to Miss. Code Ann. § 21-3-3, the Chief of Police is an elected position unless a municipality makes it an appointive position. An elected Chief of Police must be a qualified elector of the municipality and is therefore required by statute to reside within the corporate limits. A municipality that has made the Chief of Police an appointive position has the discretion to require or not require the Chief of Police to reside within the corporate limits. Noble, February 9, 2007, A.G. Op. #07-00043, 2007 Miss. AG LEXIS 16.

There is no authority for municipal governing authorities to remove or suspend an elected police chief based on an indictment. A municipal governing authority may make the police chief or other municipal officers appointive, rather than elective, by adopting an ordnance, not within 90 days of an election, that will become effective when the current officer's term expires. If an elected Chief of Police resigns or is disqualified from his position and the remainder of the term is over 6 months, the City must hold a special election to fill the vacancy pursuant to Miss. Code Ann. § 23-15-857. Elliott, March 23, 2007, A.G. Op. #07-00137, 2007 Miss. AG LEXIS 116.

The Chief of Police must be included in the civil service system of the city of Ocean Springs because the more specific provisions of Miss. Code Ann. § 21-31-13, concerning civil service systems in a handful of described municipalities, control over the more general provisions of Miss. Code Ann. § 21-3-3, which applies to all code charter municipalities in Mississippi. Edwards, March 30, 2007, A.G. Op. #07-00152, 2007 Miss. AG LEXIS 134.

Authority to hire, fire, set compensation, and define duties of municipal employees rests solely with the board of aldermen, subject to mayoral veto power. Whether a part-time police chief is sufficient to satisfy the municipality's statutory duty to provide police protection is a factual determination to be made by the governing authority. If a municipality does not have a police chief, the board of aldermen must appoint one. An untrained part-time police officer is a law enforcement trainee who must be supervised by a certified officer and has two years from hiring to become certified. McLain, March 2, 2007, A.G. Op. #07-00069, 2007 Miss. AG LEXIS 82.

Authority to hire and fire municipal employees rests solely with the Board of Aldermen, subject to mayoral veto power. The mayor may not instruct employees to disregard the official actions of the Board, and may not hire or fire municipal employees. A Board of Aldermen may adopt uniformly applied work schedule policies providing for overtime pay and such pay may only be made when there is a policy authorizing it. Reynolds, March 30, 2007, A.G. Op. #07-00155, 2007 Miss. AG LEXIS 68.

RESEARCH REFERENCES

ALR. Validity, construction, and application of regulation regarding outside employment of governmental employees or officers. 94 A.L.R.3d 1230.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 227 et seq.

CJS. 62 C.J.S., Municipal Corporations §§ 403, 407 et seq.

§ 21-3-5. Appointive officers.

From and after the expiration of the terms of office of present municipal officers, the mayor and board of aldermen of all municipalities operating under this chapter shall have the power and authority to appoint a street commissioner, and such other officers and employees as may be necessary, and to prescribe the duties and fix the compensation of all such officers and employees. All officers and employees so appointed shall hold office at the pleasure of the governing authorities and may be discharged by such governing authorities at any time, either with or without cause. The governing authorities of municipalities shall have the power and authority, in their discretion, to appoint the same person to any two (2) or more of the appointive offices, and in a municipality having a population of less than fifteen thousand (15,000), according to the latest available federal census, a member of the board of aldermen may be appointed to the office of street commissioner. In municipalities not having depositories, the clerk shall serve as ex officio treasurer. The municipal governing authorities shall require all officers and employees handling or having the custody of any public funds of such city to give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in an amount to be determined by the governing authority (which shall be not less than Fifty Thousand Dollars ($50,000.00)), the premium on same to be paid from the municipal treasury. The terms of office or employment of all officers and employees so appointed shall expire at the expiration of the term of office of the governing authorities making the appointment, unless such officers or employees shall have been sooner discharged as herein provided.

SOURCES: Codes, 1942, § 3374-37; Laws, 1950, ch. 491, § 37; Laws, 1984, ch. 409; Laws, 1986, ch. 458, § 22; Laws, 1988, ch. 488, § 2; Laws, 2009, ch. 467, § 7, eff from and after July 1, 2009.

Cross References — Surety bond required for certain appointed municipal officers, see § 21-15-38.

Oaths of office, see §§ 25-1-9, 25-1-11.

Civil liability of officers failing to perform duty, see § 25-1-45.

Nepotism being forbidden, see § 25-1-53.

Penalty for municipal officers failing to perform their duty, see § 97-11-37.

JUDICIAL DECISIONS

1. In general.
2. Discharge of officers.

1. In general.

Grant of defendants' summary judgment in an action for, inter alia, wrongful termination/suspension and intentional infliction of emotional distress by an individual was affirmed, as the individual was an at-will employee under Miss. Code Ann. § 21-3-5, the employee manual did not create an exception to his at-will employment, and his termination was not so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency. Starks v. City of Fayette, 911 So. 2d 1030 (Miss. Ct. App. 2005).

In civil rights action filed by plaintiff as a class action on behalf of all municipal employees subjected to summary dismissal and alleging a property interest in continued employment, city was not liable for the summary termination of officer in violation of his due process rights, notwithstanding city ordinance which established certain rules of conduct for police officers and, providing in part, that "any member of the department guilty of violating these rules and regulations will be subject to reprimand, suspension or dismissal"; such ordinance did not give city police employees protected property interest in their employment by limiting right of the city to discharge for violations of such rules and regulations, nor did the rules and regulations dealing with police conduct create a mutually explicit understanding, independent of § 21-3-5, which provides that employees of municipalities serve at the pleasure of governing authorities and could be terminated with or without cause. McMillian v. City of Hazlehurst, 620 F.2d 484 (5th Cir. 1980).

The governing authorities of municipalities operating under a code charter have the lawful authority to raise the salaries during their term of office. Alexander v. Edwards, 220 Miss. 699, 71 So. 2d 785 (1954).

If the governing authorities of a municipality operating under code charter have acted in bad faith, or if the salary increase had been an arbitrary or unreasonable one in relation to the resources of the town and duties of the officers, then the court would exercise supervisory power to correct such abuse. Alexander v. Edwards, 220 Miss. 699, 71 So. 2d 785 (1954).

2. Discharge of officers.

Even if the plaintiff had an impeccable work record in the town maintenance department, the board of aldermen had authority to discharge him as he served at the pleasure of the mayor and board of aldermen. Shelton v. Town of Hickory Flat, 724 So. 2d 1075 (Ct. App. 1998).

ATTORNEY GENERAL OPINIONS

Board of aldermen hires and fires subject to mayor's veto; as chief executive officer of municipality, mayor has superintending control of municipal officers and employees; daily operation of municipal government would be supervised by mayor to insure that proper services are provided. Hardin, May 10, 1990, A.G. Op. #90-0301.

Governing authorities of a municipality may pay laborers a salary or pay them an hourly rate, and they may pay salaried employees and hourly rate employees by the week, by the month or according to any other schedule as they see fit. Pittman, Feb. 14, 1992, A.G. Op. #92-0051.

Miss. Code Section 21-3-5 provides for duties and compensation of appointive municipal officers by Mayor and Board. Edens, May 12, 1993, A.G. Op. #93-0263.

Compensation of municipal clerk of code charter municipality is set by governing authorities pursuant to Miss. Code Section 21-3-5. Edens, May 12, 1993, A.G. Op. #93-0263.

Governing authorities may establish all reasonable policies relative to compensation of mayor and board of aldermen, including any compensation for attendance at recess meetings of board of aldermen. Greer, Jan. 12, 1994, A.G. Op. #93-0786.

If governing authorities decide to add collection of water bills to duties of municipal clerk, they are authorized to do so. Harvey, Jan. 12, 1994, A.G. Op. #93-0871.

Section 21-3-5 states that the mayor and board of aldermen have the authority to appoint employees as may be necessary and to prescribe their duties and fix their compensation. The governing authorities may terminate employees and hire other people for those positions at the same meeting. Taylor, October 11, 1996, A.G. Op. #96-0681.

Section 21-3-5 authorizes the mayor and board of aldermen to appoint a police chief and to fix his or her compensation. While the governing authorities have authority to set the salary of the police chief, they do not have authority to pay the moving expenses of the police chief or other officers or employees. McCreary, November 1, 1996, A.G. Op. #96-0770.

Where a municipality adopts a formal police officer personnel manual pertaining to dismissal procedures, the question whether such officers are still at-will employees of the municipality or have acquired a property interest in their continued employment is a determination to be made by a court of competent jurisdiction. Donald, July 25, 1997, A.G. Op. #97-0416.

Municipal governing authorities must require officers and employees handling public funds to obtain bonds for at least $10,000 each, but there is no statutory requirement that a mayor or aldermen obtain bonds. Hill, Aug. 8, 1997, A.G. Op. #97-0401.

A mayor may not appoint himself or anyone else to be the police chief of a municipality as the board of aldermen has statutory authority pursuant to this section to appoint municipal officers and employees with the specific responsibility of appointing the police chief. Bell-Martin, Nov. 7, 1997, A.G. Op. #97-0703.

It is within the discretion of the governing authorities to appoint persons of their choosing to fill positions they deem necessary to the operation of the municipality. Young, July 17, 1998, A.G. Op. #98-0300.

A member of a board of aldermen may serve without compensation. Null, January 22, 1999, A.G. Op. #99-0019.

The governing authorities of a code charter municipality may hire an individual to serve as a police chaplain and perform specific duties, such as supporting the police department, providing ministry and counsel to criminal defendants in municipal court, and providing assistance to officers in notifying next of kin when motor vehicle accidents result in death. Snyder, March 5, 1999, A.G. Op. #99-0098.

The statutory duty to fix the compensation of all municipal officers and employees may not be delegated to a third party arbitrator; any such delegation could unlawfully obligate the governing authorities to pay salaries that are excessive in relation to the financial resources of the municipality. Perkins, Oct. 20, 2000, A.G. Op. #2000-0603.

Municipal governing authorities may allow an employee who has been suspended without pay for a specific time period to substitute accumulated compensatory time for the time in which he or she would be uncompensated and then to continue working during that time; further, municipal governing authorities may adopt a policy in which the employee must request the substitution and in which the board in its discretion may grant the authority for the substitution in appropriate circumstances. Simpson, Jr., Oct. 27, 2000, A.G. Op. #2000-0628.

The board of aldermen has the authority to appoint a police chief, subject to the veto power of the mayor. Littleton, III, Nov. 30, 2001, A.G. Op. #01-0706.

The board of aldermen of a code charter municipality has the authority to terminate an appointed police chief, subject to the veto power of the mayor. Littleton, III, Nov. 30, 2001, A.G. Op. #01-0706.

The board of aldermen, subject to the veto of the mayor, has the authority to promote and demote employees in the police and fire departments, and the police chief and fire chief may make recommendations to the board on promotions and demotions within their respective departments. Brown, Feb. 1, 2002, A.G. Op. #01-0787.

The governing authorities have the discretion to prescribe the duties of police officers, including the duties of assisting the fire department or driving an ambulance if they are needed in those capacities, and such officers may not be paid extra compensation for performing such duties. Brown, Feb. 1, 2002, A.G. Op. #01-0787.

If the board of aldermen determines and establishes by lawful order that the duties of the head of maintenance require access to all municipal buildings, and the mayor does not veto that order, it is the duty of the mayor to see that this order is lawfully carried out; if the mayor refuses to follow the lawful orders of the board, the board may file suit against the mayor in a court of competent jurisdiction. Freeman and Daily, Mar. 15, 2002, A.G. Op. #02-0078.

If a municipality is considering authorizing a police officer to deliver municipal deposits to the municipal depository, the officer should be bonded prior to handling any municipal funds. Freeman and Daily, Mar. 15, 2002, A.G. Op. #02-0078.

Police chiefs in code charter municipalities are elected, and the governing authorities have the authority to provide by ordinance that the police chief will be appointed; the board of aldermen has the statutory duty to hire and fire police officers and may review the personnel files of police officers in code charter municipalities, whether the police chief is elected or appointed. Davis, July 19, 2002, A.G. Op. #02-0396.

The board of aldermen may reprimand a police officer over the objection of the chief of police after seeking information from the chief of police. Lee, Jan. 3, 2003, A.G. Op. #02-0749.

The board of aldermen does not have authority to make daily decisions which arise in the management of the police department, such as decisions concerning an individual officer's shift, duties or assignments. Lee, Jan. 3, 2003, A.G. Op. #02-0749.

All school district employees, both instructional and noninstructional, are entitled to elect to receive equal monthly payments for a twelve-month period. Adams, Jan. 17, 2003, A.G. Op. #02-0750.

City clerk who was working full time and who accumulated annual and/or sick leave with the approval of the employer may use that leave while working in a part time capacity subject to any restrictions on use of leave contained in the city's leave policies. Spinks, July 7, 2003, A.G. Op. 03-0310.

The board of aldermen in a code-charter municipality is empowered with setting personnel policies for municipal employees. There is no state agency or other entity which is required to approve those policies. However, should any policies adopted by the municipal governing authorities impact the ability of individuals to run for or hold elective office, approval by the U.S. Department of Justice would be required pursuant to Section 5 of the Voting Rights Act of 1965. Young, July 1, 2004, A.G. Op. 04-0263.

Municipal governing authorities have the authority to implement a policy requiring that the shifts of all employees of the police department be rotated. Davis, Oct. 29, 2004, A.G. Op. 04-0522.

Upon proper findings by the municipal governing authorities that a certain level of physical fitness is required in order for a police officer to perform his/her job duties established by the governing authorities, physical fitness standards may be enacted as a prerequisite to obtaining or maintaining a position as a police officer. Sorrell, Jan. 28, 2005, A.G. Op. 05-0028.

The power given to municipal governing authorities to appoint officers and employees applies to changing wages for employees, either increasing or decreasing, and may be exercised at any time by the governing authorities. If the governing authorities have authorized a pay increase, they may also eliminate that pay increase, or may reduce employee wages. Young, Feb. 14, 2005, A.G. Op. 05-0051.

A town has the authority to hire an experienced contractor and each of his employees as municipal employees for the purpose of constructing a sewage collection system, or for any other construction project to be undertaken by the town. Such a scheme, however, may not be utilized for the purpose of circumventing the state public construction laws. Hatcher, Feb 18, 2005, A.G. Op. 05-0057.

Although a city chief of police can be both an employee of the municipality and employed by the state as a conservation officer, the employee/officer cannot work and be paid by both entities for the same time. Rule, Apr. 8, 2005, A.G. Op. 05-0156.

Unless an appointee resigns or otherwise disqualifies himself, he is entitled to serve out the remainder of his term. Cardin, Aug. 26, 2005, A.G. Op. 05-0428.

An individual may serve as alderman without compensation and it is within the power of the municipal governing authority to amend its ordinance to allow for such voluntary service. Baum, Aug. 26, 2005, A.G. Op. 05-0434.

In order to comply with the provisions of Section 21-3-23, the street commissioner has the authority to direct "maintenance personnel" or other municipal employees only to the extent that such employees have been assigned by the mayor or by the mayor and board of alderman to duties relating to the maintenance of streets, alleys, avenues and sidewalks. Oct. 28, 2005, A.G. Op. 05-0528.

A duly appointed city engineer continues to serve until the board of aldermen either overrides the mayor's veto of the aldermen's vote to replace the engineer or makes an appointment that is not vetoed. Smith, Dec. 16, 2005, A.G. Op. 05-0594.

A Board of Aldermen is the legislative body of the city and may adopt personnel policies and procedures which govern departmental employees and equipment, including limits on the number of hours worked in a week, so long as they are applied uniformly. The Mayor is the chief executive officer of the municipality and has superintending control of the officers and affairs of the municipality as well as the responsibility of enforcing the laws and ordinances of the municipality. Taylor, February 23, 2007, A.G. Op. #07-00078, 2007 Miss. AG LEXIS 31.

Both the mayor and the aldermen have the authority to place items on the agenda, but only the board of aldermen may remove matters from the agenda, establish the order of the agenda, control the manner in which the agenda is developed, and determine who is allowed to be present during an executive session. Sullivan, March 16, 2007, A.G. Op. #07-00115, 2007 Miss. AG LEXIS 111.

Neither the mayor nor the board of aldermen may become involved in the daily operations of the police department, supervise officers, or direct the police chief's supervision of law enforcement. The board of aldermen has authority to appoint, hire, and fire municipal officers and employees, fix their compensation, prescribe their duties, and adopt personnel policies and procedures, subject to the mayor's veto. Sullivan, March 16, 2007, A.G. Op. #07-00115, 2007 Miss. AG LEXIS 111.

Authority to hire, fire, set compensation, and define duties of municipal employees rests solely with the board of aldermen, subject to mayoral veto power. Whether a part-time police chief is sufficient to satisfy the municipality's statutory duty to provide police protection is a factual determination to be made by the governing authority. If a municipality does not have a police chief, the board of aldermen must appoint one. An untrained part-time police officer is a law enforcement trainee who must be supervised by a certified officer and has two years from hiring to become certified. McLain, March 2, 2007, A.G. Op. #07-00069, 2007 Miss. AG LEXIS 82.

Authority to hire and fire municipal employees rests solely with the Board of Aldermen, subject to mayoral veto power. The mayor may not instruct employees to disregard the official actions of the Board, and may not hire or fire municipal employees. A Board of Aldermen may adopt uniformly applied work schedule policies providing for overtime pay and such pay may only be made when there is a policy authorizing it. Reynolds, March 30, 2007, A.G. Op. #07-00155, 2007 Miss. AG LEXIS 68.

RESEARCH REFERENCES

ALR. Validity, construction, and application of regulation regarding outside employment of governmental employees or officers. 94 A.L.R.3d 1230.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 229.

CJS. 62 C.J.S., Municipal Corporations §§ 409, 441, 442,445, 447, 449, 450.

§ 21-3-7. Number of aldermen and their election.

In all municipalities having a population of less than ten thousand according to the latest available federal census, there shall be five aldermen, which aldermen may be elected from the municipality at large, or, in the discretion of the municipal authority, the municipality may be divided into four wards, with one alderman to be selected from each ward and one from the municipality at large. On a petition of twenty per cent of the qualified electors of any such municipality, the provisions of this section as to whether or not the aldermen shall be elected from wards or from the municipality at large shall be determined by the vote of the majority of such qualified electors of such municipality voting in a special election called for that purpose. All aldermen shall be selected by vote of the entire electorate of the municipality. Those municipalities which determine to select one alderman from each of the four wards shall select one from the candidates for alderman from each particular ward who shall be a resident of said ward by majority vote of the entire electorate of the municipality.

In all municipalities having a population of ten thousand or more, according to the latest available federal census, there shall be seven aldermen, which aldermen may be elected from the municipality at large, or, in the discretion of the municipal authority, the municipality may be divided into six wards, with one alderman to be selected from each ward and one from the municipality at large. On a petition of twenty per cent of the qualified electors of any such municipality, the provisions of this section as to whether or not the aldermen shall be elected from wards or from the municipality at large shall be determined by the vote of the majority of such qualified electors of such municipality voting in a special election called for that purpose. This section in no way affects the number of aldermen, councilmen, or commissioners of any city operating under a special charter. All aldermen shall be selected by vote of the entire electorate of the municipality. Those municipalities which determine to select one alderman from each of the six wards shall select one of the candidates for alderman from each particular ward by majority vote of the entire electorate of the municipality.

SOURCES: Codes, 1942, § 3374-36; Laws, 1950, ch. 491, § 36; Laws, 1962, ch. 537, eff from and after passage (approved May 24, 1962).

Editor's Note — This section, as enacted by Section 1 of Chapter 537, Laws of 1962, was held unconstitutional in Stewart v. Waller, 404 F. Supp. 206 (N.D. Miss. 1975), and a prior version of the section, enacted by Section 36 of Chapter 491, Laws of 1950 and codified as § 3374-36, Mississippi Code of 1942, was given full force and effect by the court. The section as adopted in 1962 is published here as there has been no legislative action taken to change the law since the court's decision. The text of the section in effect prior to the 1962 amendment is printed below.

"Section 36. **Number of aldermen and wards.** --- In all municipalities operating under a code charter and having a population of less than ten thousand, according to the latest available federal census, there shall be five aldermen, which aldermen may be elected from the municipality at large, or in the discretion of the municipal authorities, the municipality may be divided into four wards, with one alderman to be elected from each ward and one from the municipality at large. In all such municipalities having a population of ten thousand, or more, according to the latest available federal census, there shall be seven aldermen, and the municipality shall be divided into six wards with one alderman to be elected from each ward and one from the municipality at large. The municipal authorities may establish as many voting precincts in each ward as may be necessary and desirable. The mayor of the municipality shall be elected from the municipality at large." [Laws, 1950, ch. 491, § 36]

Cross References — For comparable provisions under various forms of government, see §§ 21-5-5 (commission); 21-7-7 (council); 21-8-7 (mayor-council); and 21-9-15 and 21-9-17 (council-manger).

Municipal elections generally, see §§ 23-15-13, 23-15-35, 23-15-171, 23-15-173, 23-15-559, 23-15-857 and 23-15-859.

JUDICIAL DECISIONS

1. In general.
2. Constitutionality.

1. In general.

A change by the City of Canton, Mississippi from ward to at-large elections of city aldermen constituted a change in a voting standard, practice, or procedure after November 1, 1964, within the federal approval requirement of § 5 of the Voting Rights Act of 1965 (42 USC § 1973c), notwithstanding that the 1962 state statute, Code 1942, § 3374-36, required such at-large elections, where the city had ignored the state statute by electing aldermen by wards in 1965 elections, and where there was no change between November 1, 1964 and the 1965 elections to suggest that a different procedure would have been in effect on the earlier date, thus establishing that the procedure in fact "in force or effect" in the city on November 1, 1964, was to elect aldermen by wards. Perkins v. Matthews, 400 U.S. 379, 91 S. Ct. 431, 27 L. Ed. 2d 476 (1971), on remand, 336 F. Supp. 6 (S.D. Miss. 1971).

2. Constitutionality.

Code 1972, § 21-3-7 is a purposeful device conceived and operated to further racial discrimination in the voting process, and is therefore violative of the Fourteenth and Fifteenth Amendments to the United States Constitution. The statute law of Mississippi relating to aldermanic elections which existed prior to the passage of Code 1972, § 21-3-7, and which was modified or repealed by Code 1972, § 21-3-7, is declared to be in full force and effect as if it had never been repealed; Members of the defendant class are restrained from conducting at-large aldermanic elections pursuant to Code 1972, § 21-3-7 or local ordinances implementing the section. Stewart v. Waller, 404 F. Supp. 206 (N.D. Miss. 1975).

ATTORNEY GENERAL OPINIONS

Aldermen have the authority to observe municipal department operations for the purpose of reporting back to the entire board, but they may not supervise departments or direct the daily activities of department employees. Davies, Aug. 15, 1997, A.G. Op. #97-0510.

The legislative power in a code charter municipality, including the authority to adopt a budget and spend funds, is vested in the board of aldermen; thus, the board may appropriate funds for one or more vehicles for the police department but assignment of the vehicles is in the the discretion of the police chief. Brown, Feb. 1, 2002, A.G. Op. #01-0787.

A mayor may suspend employees with pay, but only the board of aldermen by official action in the minutes may suspend employees without pay. Gerhart, Mar. 8, 2002, A.G. Op. #02-0056.

Regardless of whether the city board is or is not in official session, individual members of a board of aldermen have no authority to direct the daily activities of municipal employees. Hurt, Oct. 13, 2006, A.G. Op. 06-0499.

§ 21-3-9. Qualifications of mayor and aldermen.

The mayor and members of the board of aldermen shall be qualified electors of the municipality and, in addition, the aldermen elected from and by wards shall be residents of their respective wards.

SOURCES: Codes, 1892, §§ 2987, 2988; 1906, §§ 3385, 3386; Hemingway's 1917, §§ 5913, 5914; 1930, §§ 2521, 2522; 1942, § 3374-42; Laws, 1950, ch. 491, § 42, eff from and after July 1, 1950.

Cross References — For comparable provisions under various other forms of government, see §§ 21-5-5 (commission); 21-7-7 (council); 21-8-21 (mayor-council); and 21-9-15 (council-manger).

JUDICIAL DECISIONS

3. Relation to other laws.

Black chairman of a county political party executive committee was guilty of racial discrimination under § 2 of the Voting Rights Act because, inter alia, he urged nonresident black candidates to run for office against white incumbents, when he knew they were not qualified based on the residency requirements in Miss. Code Ann. § 21-3-9. United States v. Brown, 494 F. Supp. 2d 440 (S.D. Miss. June 29, 2007), affirmed by 561 F.3d 420, 2009 U.S. App. LEXIS 4030 (5th Cir. Miss. 2009).

ATTORNEY GENERAL OPINIONS

Pay raises for county prosecuting attorneys, sheriffs and justice court justices may be made retroactively effective to April 1, 1997, once Laws, 1997, Chapter 570 becomes effectuated under Section 5 of the Voting Rights Act. Dulaney, July 25, 1997, A.G. Op. #97-0403.

An individual who is otherwise qualified to be a candidate for the office of alderman of a code charter municipality may qualify for the office of alderman if the city employs his or her spouse as a firefighter. Quillen, Feb. 9, 2001, A.G. Op. #2001-0039.

A municipal civil service commission does not have the authority to mandate an employee be given "light duty" assignments in contravention of lawfully adopted municipal personnel policies. Bowman, Feb. 7, 2003, A.G. Op. #03-0771.

If a board of aldermen determines, consistent with the facts, that a member is no longer a resident of the ward he was elected to serve and is not merely temporarily residing outside his ward but has abandoned same, a vacancy would have to be declared and a special election set in accordance with Section 23-15-857. Skellie, Aug. 18, 2006, A.G. Op. 06-0377.

§ 21-3-11. Office of alderman or mayor vacated by removal of residence.

If any person elected as an alderman from a particular ward shall remove his residence from said ward, his office shall automatically be vacated, and if the mayor or any alderman elected from the municipality at large shall remove his residence from such municipality, the office shall likewise automatically be vacated. The vacancy shall be declared by the mayor and board of aldermen in the case of an alderman and by the board of aldermen in the case of a mayor, and such vacancy shall be filled in the manner prescribed by law.

SOURCES: Codes, 1906, § 3376; Hemingway's 1917, § 5904; 1930, § 2512; 1942, § 3374-38; Laws, 1950, ch. 491, § 38, eff from and after July 1, 1950.

Cross References — Vacating office by leaving local area or by failing to account for public funds, see § 25-1-59.

§ 21-3-13. Mayor pro tempore.

The board of aldermen shall elect from among its members a mayor pro tempore, who shall serve in the place of the mayor in cases of temporary absence or disability of the mayor.

SOURCES: Codes, 1942, §§ 3417, 3374-39; Laws, 1950, ch. 491, § 39, eff from and after July 1, 1950.

Cross References — Duties of mayor, see § 21-3-15.

For comparable provisions under various other forms of government, see §§ 21-5-7 (commission); 21-7-13 (council); 21-8-19 (mayor-council); and 21-9-37 (council-manager).

ATTORNEY GENERAL OPINIONS

A person elected as a mayor pro tempore by a board of aldermen remains in that office for the remainder of the term for which he or she was elected as an alderman unless such person resigns from the position of mayor pro tempore or vacates the office of alderman during such term. Perkins, Aug. 8, 1997, A.G. Op. #97-0448.

Although the statute does not provide for a penalty for failure to comply with its provisions, under commonly accepted rules of statutory construction a statute providing that certain things "shall" be done is mandatory, while a recitation that specific acts "may" be done is directory only. Jordan, July 31, 1998, A.G. Op. #98-0442.

Once the board has appointed a mayor pro tempore pursuant to the statute, the appointee remains in that office for the duration of the term of office to which he was elected as an alderman unless such appointee resigns from the office of mayor pro tempore or vacates the office of alderman during such term. Jordan, July 31, 1998, A.G. Op. #98-0442.

When acting as mayor pro tem, an alderman in a code-charter municipality may only exercise the authority of the mayor to vote, that is, in the case of a tie. Brooks, Feb. 3, 2006, A.G. Op. 06-0029.

A mayor's mere physical absence from the jurisdiction does not trigger the powers of the mayor pro tempore. A mayor must be absent from a jurisdiction in such a manner so as to prevent the mayor from performing the duties of the office. Bryan, Aug. 11, 2006, A.G. Op. 06-0012.

§ 21-3-15. Duties of the mayor; authority of the board of aldermen.

(1) The mayor shall preside at all meetings of the board of aldermen, and in case there shall be an equal division, shall give the deciding vote. The executive power of the municipality shall be exercised by the mayor, and the mayor shall have the superintending control of all the officers and affairs of the municipality, and shall take care that the laws and ordinances are executed.

(2)(a) The legislative power of the municipality shall be exercised by the board of aldermen by a vote within a legally called meeting. No member of the board of aldermen shall give orders to any employee or subordinate of a municipality other than the alderman's personal staff.

(b) Ordinances adopted by the board of aldermen shall be submitted to the mayor. The mayor shall, within ten (10) days after receiving any ordinance, either approve the ordinance by affixing his signature thereto, or return it to the board of aldermen by delivering it to the municipal clerk together with a written statement setting forth his objections thereto or to any item or part thereof. No ordinance or any item or part thereof shall take effect without the mayor's approval, unless the mayor fails to return an ordinance to the board of aldermen prior to the next meeting of the board, but no later than fifteen (15) days after it has been presented to him, or unless the board of aldermen, upon reconsideration thereof on or after the third day following its return by the mayor, shall, by a vote of two-thirds (⅔) of the members of the board, resolve to override the mayor's veto.

(3) The term "ordinance" as used in this section shall be deemed to include ordinances, resolutions and orders.

SOURCES: Codes, 1892, § 2979; 1906, § 3377; Hemingway's 1917, § 5905; 1930, § 2513; 1942, § 3374-40; Laws, 1950, ch. 491, § 40; Laws, 1982, ch. 472; Laws, 2006, ch. 333, § 1; Laws, 2008, ch. 435, § 1, eff from and after July 1, 2008.

Cross References — Selection of mayor pro tempore, see § 21-3-13.

For comparable provisions under various other forms of government, see §§ 21-5-7, 21-5-9 (commission); 21-7-7, 21-7-11, 21-7-13 (council); 21-8-13 through 21-8-17 and 21-8-27 (mayor-council); and 21-9-31, 21-9-35, 21-9-37 (council-manager).

Other specific powers and duties of mayor, see §§ 21-15-7 through 21-15-15.

Powers of governing authorities, see § 21-17-5.

Duty of mayor to notify governor whenever local resources inadequate to cope with emergencies, see § 33-7-301.

Authority to lease lands to the United States for the purpose of securing construction of air national guard armories, see § 33-11-15.

Emergency powers under civil defense law, see §§ 33-15-1 et seq.

Appointment of extra deputies and police officers, see § 45-5-9.

Conditions by which tenant holding-over may be removed by order of mayor, see §§ 89-7-27 et seq.

JUDICIAL DECISIONS

1. In general.
2. Constitutionality.
3. Veto power.
4. Liability.

1. In general.

The action of a mayor in removing a captain of police is a judicial or quasi judicial act and a writ of prohibition would lie to prohibit him from wrongfully exercising such judicial discretion. Glover v. City Council, 132 Miss. 776, 96 So. 521 (1923).

A mayor having signed an ordinance without having taken oath of office is a de facto officer and his title to office cannot be attacked in prosecution for violation of speed ordinance by a plea that the ordinance is invalid because signed before the mayor took oath of office. Town of Sumrall v. Polk, 118 Miss. 687, 79 So. 847 (1918).

Under Const. 1890, § 2, a justice of the peace vacates his office by accepting the office of mayor, which belongs to the executive department, the judicial powers of that office being incidental, and not primary. State ex rel. Att'y Gen. v. Armstrong, 91 Miss. 513, 44 So. 809 (1907).

2. Constitutionality.

Where the mayor and board of aldermen held a special session without giving notice and overturned the decision of the board of zoning appeals affirming a building permit in favor of an ice company, the mayor exceeded his authority under Miss. Code Ann. § 21-3-15. The company's right to due process was violated. City of Petal v. Dixie Peanut Co., 994 So. 2d 835 (Miss. Ct. App. 2008), writ of certiorari dismissed by 998 So. 2d 1010, 2008 Miss. LEXIS 683 (Miss. 2008).

A law making the mayor of a town ex-officio justice of the peace does not violate § 2 of the Const. 1890. Poplarville Sawmill Co. v. A. Marx & Sons, 117 Miss. 10, 77 So. 815 (1918).

3. Veto power.

Under § 21-3-15, the mayor of a town operating under a code charter had the authority to veto an order of its board of aldermen appointing a town attorney. Edwards v. Weeks, 633 So. 2d 1035 (Miss. 1994).

While the mayor may veto any measure, yet he cannot veto the election of a police justice, an election not being a measure within the meaning of the statute. Rich v. McLauren, 83 Miss. 95, 35 So. 337 (1903) but see Edwards v. Weeks, 633 So. 2d 1035 (Miss. 1994).

4. Liability.

Although the mayor may make an arrest without a warrant for an offense committed in his presence he is liable on his official bond for damages resulting from a brutal and wrongful assault in making it. Carlisle v. Village of Silver Creek, 85 Miss. 380, 37 So. 1015 (1905).

The sureties on the bond of a mayor are liable for injurious acts done by him colore officii in the line of his official duty although such acts be illegal. State ex rel. McLaurin v. McDaniel, 78 Miss. 1, 27 So. 994, 84 Am. St. R. 618 (1900).

A mayor who causes to be arrested, fines and commits to prison without affidavit one who has committed no offense in his presence is liable in action for false imprisonment. State ex rel. McLaurin v. McDaniel, 78 Miss. 1, 27 So. 994, 84 Am. St. R. 618 (1900).

ATTORNEY GENERAL OPINIONS

While mayor in code charter municipality has authority to observe activities of police chief and policemen and to report to board of aldermen on activities of department, mayor does not have authority to supervise law enforcement by police chief on daily basis. Gorrell, Sept. 26, 1990, A.G. Op. #90-0591.

Mayor of code charter municipality may request that police chief instruct radio dispatcher to call mayor if there has been serious crime committed. Gorrell, Sept. 26, 1990, A.G. Op. #90-0591.

When mayor pro tempore is presiding at meeting of municipal governing authorities in temporary absence of mayor, mayor pro tempore is acting as mayor with duties and powers of code charter mayor and not as alderman; when alderman is serving as mayor pro tempore, he has only voting powers of mayor set forth in statute and may not vote as alderman; two-thirds vote of five member board of aldermen necessary to override code charter mayor's veto requires votes of four aldermen voting as aldermen, exclusive of one alderman serving as mayor pro tempore. Bailey, Sept. 26, 1990, A.G. Op. #90-0728.

Ten day period within which mayor must either approve or object to ordinance starts running when clerk presents minutes to mayor. Childre, Sept. 10, 1992, A.G. Op. #92-0656.

Under Miss. Code Section 21-3-15(2), if mayor fails to return ordinance to board of aldermen prior to next meeting of board, but no later than fifteen days after it has been presented to him, measure becomes effective. Warren, June 3, 1993, A.G. Op. #93-0401.

Generally, statutes governing Mayor/Aldermen or "code charter" form of government, empower board of aldermen to set policy through enactment of ordinances, orders and resolutions, all subject to Mayor's veto; mayor, as chief executive officer, oversees daily operation of municipal government and makes recommendations to board. Mayor does not have right to appoint police chief; mayor may recommend person to Board of Aldermen. Lee Sept. 15, 1993, A.G. Op. #93-0666.

If order approving new budget provides for change in salary in question, mayor of code charter municipality would not be authorized to "line item" veto portion of that order; pursuant to Section 21-3-15 mayor of code charter municipality does have authority to veto any ordinance, order or resolution in its entirety. Austin Oct. 6, 1993, A.G. Op. #93-0697.

A mayor has the authority to test the emergency services of a municipality for the purpose of evaluating the readiness and effectiveness of the services in the event of an actual emergency and so that necessary changes can be recommended. Ellis, Aug. 1, 1997, A.G. Op. #97-0363.

A mayor has the power to veto an order by a board of aldermen appointing a city attorney. Lee, Aug. 8, 1997, A.G. Op. #97-0459.

Generally, abstentions from city council member votes are counted with the side casting the majority vote. Spann, Aug. 22, 1997, A.G. Op. #97-0519.

A mayor may not appoint aldermen as municipal department heads. Bell-Martin, Nov. 7, 1997, A.G. Op. #97-0703.

A mayor did not have authority to veto a decision of the board to reinstate a fireman who the mayor had demoted without a change in compensation; "superintending control" in subsection (1) means that the mayor, as the chief executive officer, has general supervisory oversight of municipal government, but department heads, such as the police and fire chief, have authority and responsibility to make decisions concerning the daily operations of their departments. Fernald, February 19, 1999, A.G. Op. #99-0085.

A county may provide equipment, materials, such as dirt and gravel, and labor for constructing a playground on city owned property as long as the playground is available to all of the citizens of the county. Gary, March 12, 1999, A.G. Op. #99-0118.

The board of aldermen of a code charter municipality has the authority to terminate an appointed police chief, subject to the veto power of the mayor. Littleton, III, Nov. 30, 2001, A.G. Op. #01-0706.

The board of aldermen has the authority to appoint a police chief, subject to the veto power of the mayor. Littleton, III, Nov. 30, 2001, A.G. Op. #01-0706.

A mayor of a code charter municipality has the authority to veto the appointment of a police chief as well as any ordinance, resolution, or order of the board; however, the mayor does not have authority to terminate an appointed police chief or declare the office of police chief open, thereby relieving the appointed police chief of his duties. Littleton, III, Nov. 30, 2001, A.G. Op. #01-0706.

A mayor may suspend employees with pay, but only the board of aldermen by official action in the minutes may suspend employees without pay. Gerhart, Mar. 8, 2002, A.G. Op. #02-0056.

If the board of aldermen determines and establishes by lawful order that the duties of the head of maintenance require access to all municipal buildings, and the mayor does not veto that order, it is the duty of the mayor to see that this order is lawfully carried out; if the mayor refuses to follow the lawful orders of the board, the board may file suit against the mayor in a court of competent jurisdiction. Freeman and Daily, Mar. 15, 2002, A.G. Op. #02-0078.

Municipal governing authorities do not have authority to assign an unmarked police car to a mayor for use in performing duties for the municipality, as § 25-1-87 makes apparent that unmarked police cars must be used for police purposes. Gregory, Oct. 18, 2002, A.G. Op. #02-0575.

The mayor may request attendance but may not force attendance at a weekly staff meeting of an elected police chief. Lee, Jan. 3, 2003, A.G. Op. #02-0749.

A weekly staff meeting of the mayor and departments heads, including the police chief, does not conflict with the doctrine of separation of powers set forth in Article 1 and 2 of the Mississippi Constitution. Lee, Jan. 3, 2003, A.G. Op. #02-0749.

Residents of a municipality may meet with the mayor to discuss any matter pertaining to the operation of the municipality, including police protection, and the mayor may meet with the police chief or police officers to gather information concerning operation of the police department and may also direct residents to communicate with the police chief concerning police protection generally or specific ongoing situations in law enforcement. Lee, Jan. 3, 2003, A.G. Op. #02-0749.

The mayor may meet with police officers to obtain information concerning the operation of the police department, but the mayor does not have authority to become involved in the day to day operation of the police department or to make law enforcement decisions. Lee, Jan. 3, 2003, A.G. Op. #02-0749.

The board of aldermen may reprimand a police officer over the objection of the chief of police after seeking information from the chief of police. Lee, Jan. 3, 2003, A.G. Op. #02-0749.

The board of aldermen does not have authority to make daily decisions which arise in the management of the police department, such as decisions concerning an individual officer's shift, duties or assignments. Lee, Jan. 3, 2003, A.G. Op. #02-0749.

All school district employees, both instructional and noninstructional, are entitled to elect to receive equal monthly payments for a twelve-month period. Adams, Jan. 17, 2003, A.G. Op. #02-0750.

If the board of aldermen adopts an ordinance at a meeting with the mayor pro tempore presiding and if the mayor pro tempore does not either veto or approve the ordinance, then the mayor may veto the ordinance upon his or her return within the statutory period. The statutory period commences at the time whoever is acting as mayor receives the ordinance from the board. Baker, July 18, 2003, A.G. Op. 03-0320.

Where a mayor's handwritten veto message containing the reasons for a veto was delivered within the ten day deadline for doing so, the lack of a signature on a subsequently filed typed veto message was not fatal to the validity of the veto. Hudson, Aug. 29, 2003, A.G. Op. 03-0465.

If the member of a municipal governing body seeking to review personnel records has need, in the course and scope of his or her duties on behalf of the municipality, to review them, he or she should be entitled to such a review. Stovall, Jan. 6, 2004, A.G. Op. 03-0683.

To override a mayor's veto in a code charter municipality having a seven member board, five of the seven members must vote to override. When one of those seven members is serving as mayor pro tempore, the five votes needed must come from the remaining six voting members of the board. Rutledge, Jan. 6, 2004, A.G. Op. 03-0690.

A mayor can cast the deciding vote in a tie, but he can also veto an ordinance, order or resolution regardless of how many aldermen initially vote in favor. In the case of a five member board of aldermen, in order to override the mayor's veto, four aldermen must vote in favor of overriding the mayor in order for the ordinance, order or resolution to take effect. Edwards, Apr. 16, 2004, A.G. Op. 04-0154.

The mayor of a code-charter municipality would have the authority to veto an order of the board of aldermen to enter into a contract or to terminate a contract. The mayor would not have the authority to veto the decision of the board not to enter into a contract. Further, if a contract is due to expire on its own terms, and the board decides not to renew that contract, that decision is not appropriate for mayoral veto. A municipal board of aldermen can override the mayor's veto with a ⅔ vote of all members (4 out of 5). Brown, July 1, 2004, A.G. Op. 04-0280.

A resolution of the board of aldermen to conduct a referendum on the question of naming the city hall is an affirmative action of the board, and thus is subject to veto by the mayor. McLaurin, July 16 2004, A.G. Op. 04-0356.

The mayor does not have the sole right to remove matters from the agenda, or to establish the order of the agenda, or to control the manner in which the agenda is developed, in that a majority of the board of aldermen control the agenda. Young, Aug. 6, 2004, A.G. Op. 04-0390.

As a department head, the city clerk is subject to the supervision of the mayor. If the clerk refuses to provide to the mayor information related to the agenda, after being asked to do so, the clerk may be disciplined in accordance with policies adopted by the governing authorities. Young, Aug. 6, 2004, A.G. Op. 04-0390.

Unless the charter of a special charter municipality provides otherwise, both the mayor and aldermen are entitled to place matters on the agenda for meetings. Cook, Oct. 29, 2004, A.G. Op. 04-0526.

A mayor in a municipality operating under a mayor/alderman form of government has 10 days after receiving any ordinance in which to exercise his or her right to veto. The fifteen 15 day period referenced in the statute only comes into play where a mayor has not exercised his or her veto power within the ten day period, and also fails to sign the ordinance and return it to the board within that time period. In that instance, the ordinance may become effective without the mayor's signature. Young, Feb. 14, 2005, A.G. Op. 05-0051.

Pursuant to Section 21-3-15, action to override a veto cannot occur sooner than three days after the delivery of the veto message to the board by the mayor. It is suggested that override of a mayoral veto is a proper subject for a special meeting to avoid undue delay in finalizing any ordinances, orders or resolutions which may have been the subject of the veto. Wiggins, July 29, 2005, A.G. Op. 05-0385.

In municipalities in which the mayor has been given no role in the approval of the minutes of the governing authority, "receipt" for purposes of Section 21-3-15 is the meeting in which the minutes are presented for approval by the board of aldermen. The 10 days would begin to run from the date of the meeting at which the minutes are approved. In municipalities in which the authority to approve the minutes has been delegated to the mayor, the 10-day period begins to run at the time the clerk presents the minutes to the mayor. Wiggins, July 29, 2005, A.G. Op. 05-0385.

The authority of the mayor of a code charter municipality to veto ordinances, resolutions and orders includes the appointment of municipal officials. Cole, July 29, 2005, A.G. Op. 05-0374.

In a code charter municipality with five aldermen, four aldermen may hold a meeting and may take official action without the presence of the mayor or the mayor pro tempore. Four aldermen may meet and may take official action with three aldermen constituting a quorum and one aldermen serving as mayor pro tempore for the meeting. Brown, Aug. 11, 2005, A.G. Op. 05-0399.

Although the statute prescribes no time frame in which the board of aldermen is to act to override a veto, a board must act to override not later than the next lawfully convened regular or special meeting of the governing authority. Brown, Aug. 11, 2005, A.G. Op. 05-0400.

The person appointed by the board of aldermen is not entitled to continue to serve after a mayoral veto of that appointment. If the veto is overridden, the appointment is valid. Brown, Aug. 11, 2005, A.G. Op. 05-0400.

The municipal clerk has no authority to preside over a meeting of the governing authorities. Brown, Aug. 11, 2005, A.G. Op. 05-0400.

When acting as mayor pro tem, an alderman in a code-charter municipality may only exercise the authority of the mayor to vote, that is, in the case of a tie. Brooks, Feb. 3, 2006, A.G. Op. 06-0029.

A mayor has the authority to enact policies related to the overall supervision of employees and department heads and to give directives to the employees or department heads regarding their duties. To the extent, however, that a policy or directive adversely impacts the ability of the legislative branch to obtain information necessary to make decisions and to carry out the business of the city, such policies would be contrary to the statutory scheme set out for the mayor/alderman form of government. Goddard, June 16, 2006, A.G. Op. 06-0248.

Regardless of whether the city board is or is not in official session, individual members of a board of aldermen have no authority to direct the daily activities of municipal employees. Hurt, Oct. 13, 2006, A.G. Op. 06-0499.

A Board of Aldermen is the legislative body of the city and may adopt personnel policies and procedures which govern departmental employees and equipment, including limits on the number of hours worked in a week, so long as they are applied uniformly. The Mayor is the chief executive officer of the municipality and has superintending control of the officers and affairs of the municipality as well as the responsibility of enforcing the laws and ordinances of the municipality. Taylor, February 23, 2007, A.G. Op. #07-00078, 2007 Miss. AG LEXIS 31.

Both the mayor and the aldermen have the authority to place items on the agenda, but only the board of aldermen may remove matters from the agenda, establish the order of the agenda, control the manner in which the agenda is developed, and determine who is allowed to be present during an executive session. Sullivan, March 16, 2007, A.G. Op. #07-00115, 2007 Miss. AG LEXIS 111.

Neither the mayor nor the board of aldermen may become involved in the daily operations of the police department, supervise officers, or direct the police chief's supervision of law enforcement. The board of aldermen has authority to appoint, hire, and fire municipal officers and employees, fix their compensation, prescribe their duties, and adopt personnel policies and procedures, subject to the mayor's veto. Sullivan, March 16, 2007, A.G. Op. #07-00115, 2007 Miss. AG LEXIS 111.

Authority to hire and fire municipal employees rests solely with the Board of Aldermen, subject to mayoral veto power. The mayor may not instruct employees to disregard the official actions of the Board, and may not hire or fire municipal employees. A Board of Aldermen may adopt uniformly applied work schedule policies providing for overtime pay and such pay may only be made when there is a policy authorizing it. Reynolds, March 30, 2007, A.G. Op. #07-00155, 2007 Miss. AG LEXIS 68.

§ 21-3-17. Signing of commissions and appointments; approval of bonds.

The mayor shall sign the commissions and appointments of all officers elected and appointed by the mayor and board of aldermen. Such commissions and appointments shall be attested by the clerk. The refusal, failure or neglect of the mayor to sign such commissions and appointments, or the refusal, failure or neglect of the clerk to attest same, shall not affect the validity of the acts of such officer when the minutes show the election or appointment was regularly had or made by the board. All bonds payable to the municipality shall be approved by the mayor and clerk.

SOURCES: Codes, 1892, § 2980; 1906, § 3378; Hemingway's 1917, § 5906; 1930, § 2514; 1942, § 3374-41; Laws, 1950, ch. 491, § 41, eff from and after July 1, 1950.

Cross References — Approval of bonds of county officers, see § 25-1-19.

Officers giving bond and taking oath as conditions precedent to acting, see § 25-1-35.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

A defaulting treasurer and his sureties cannot escape liability because his official bond was approved by resolution instead of ordinance. Town of Gloster v. Harrell, 77 Miss. 793, 23 So. 520 (1898).

§ 21-3-19. Regular meetings of board of aldermen; recess of meetings; quorum.

(1) The mayor and board of aldermen shall hold regular meetings the first Tuesday of each month at such place and hour as may be fixed by ordinance, and may, on a date fixed by ordinance, hold a second regular meeting in each month at the same place established for the first regular meeting provided said

second meeting shall be held at a day and hour fixed by said ordinance which shall be not less than two (2) weeks from the first day of the first regular meeting and not more than three (3) weeks from the date thereof. When a regular meeting of the mayor and board of aldermen shall fall upon a holiday, the mayor and board shall meet the following day. The mayor and board may recess either meeting from time to time to convene on a day fixed by an order of the mayor and board entered on its minutes, and may transact any business coming before it for consideration. In all cases it shall require a majority of all aldermen to constitute a quorum for the transaction of business. The quorum required by this section may be established by teleconference or video means as provided in Section 25-41-5(2)(b).

(2) The mayor and board of aldermen may, pursuant to Section 21-17-17, Mississippi Code of 1972, set a day other than Tuesday for the holding of their regular monthly meeting.

SOURCES: Codes, 1892, § 2989; 1906, § 3387; Hemingway's 1917, § 5915; 1930, § 2523; 1942, § 3374-43; Laws, 1950, ch. 491, § 43; Laws, 1960, ch. 423; Laws, 1973, ch. 324, § 1; Laws, 1979, ch. 403, § 2; Laws, 2012, ch. 442, § 2, eff September 20, 2012 (the date the United States Attorney General determined the amendment of this section was not subject to Section 5 of the Voting Rights Act of 1965.)

Editor's Note — By letter dated September 20, 2012, the United States Attorney General determined that the amendments to this section by Chapter 442, Laws of 2012, were not subject to preclearance under Section 5 of the Voting Rights Act of 1965, as amended and extended.

Cross References — Moving municipality's site of government in emergency resulting from enemy attack, see §§ 17-7-1 et seq.

Special meetings of the board of alderman, see § 21-3-21.

Meetings of governing authorities under various forms of government, see §§ 21-5-13 (commission); 21-7-9 (council); 21-8-11 (mayor-council); 21-9-39 (council-manager).

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

The mayor and board of aldermen at a regular meeting held under this section after an election and before the organization of the new board has no power to elect inferior municipal officers referred to in § 3389; They must be elected by the new board. Ott v. State ex rel. Lowery, 78 Miss. 487, 29 So. 520 (1901).

ATTORNEY GENERAL OPINIONS

Three aldermen meeting without presence of mayor or mayor pro tempore may not pass binding municipal resolutions, orders or ordinances. Buck, Nov. 12, 1992, A.G. Op. #92-0865.

Where there is no newspaper located in or published in a town, a newspaper within the county having general circulation in the municipality (or if there is none, a newspaper having general circulation within the county) must be used for publication of an ordinance to change the date of board meetings, as is required for the publication of all other ordinances of the municipality pursuant to Section 21-13-11. Thomas, May 30, 2003, A.G. Op. 03-0268.

In a code charter municipality with five aldermen, four aldermen may hold a meeting and may take official action without the presence of the mayor or mayor pro tempore. Clark, June 20, 2003, A.G. Op. 03-0296.

In a code charter municipality with a five member board of aldermen, if three members fail to appear for any meeting, a quorum does not exist and no official business can legally be conducted. Young, Aug. 27, 2004, A.G. Op. 04-0421.

This section authorizes the mayor and board of aldermen to set a day other than Tuesday for the holding of their regular monthly meeting in accordance with § 21-17-17 which requires that such change be made by the adoption of an ordinance and three weeks publication of said ordinance prior to implementing the change. This necessarily means that, in order to revert back to the current meeting date, the same procedure would have to be repeated. Stratton, Feb. 4, 2005, A.G. Op. 05-0041.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 156 et seq.

§ 21-3-21. Special meetings of board of aldermen.

The mayor or any two (2) aldermen may, by written notice, call a special meeting of the mayor and board of aldermen for the transaction of important business. The notice must state the time of meeting and distinctly specify the subject matters of business to be acted upon and be signed by the officer or officers calling the meeting. Notice of the meeting shall be given to the members of the board, including the mayor, who have not signed it and who can be found, at least three (3) hours before the time fixed for the meeting. The method of notice shall be entered on the minutes of the special meeting, and business not specified therein shall not be transacted at the meeting. A member of the board shall not receive pay for attending a special meeting.

SOURCES: Codes, 1892, § 2990; 1906, § 3388; Hemingway's 1917, § 5916; 1930, § 2524; 1942, § 3374-44; Laws, 1950, ch. 491, § 44; Laws, 2004, ch. 320, § 1, eff from and after July 1, 2004.

JUDICIAL DECISIONS

1. In general.
2. Jurisdiction.
3. Notice of meeting.

1. In general.

Provisions of statute as to calling special meeting of mayor and aldermen are mandatory. Wilson v. City of Lexington, 153 Miss. 212, 121 So. 859 (1929), corrected, 155 Miss. 157, 124 So. 268 (1929).

Statute must be strictly construed. Wilson v. City of Lexington, 153 Miss. 212, 121 So. 859 (1929), corrected, 155 Miss. 157, 124 So. 268 (1929).

Where statute was not complied with in calling special meeting to adopt ordinance levying special assessments and providing for notice thereof, assessment was nullity. Wilson v. City of Lexington, 153 Miss. 212, 121 So. 859 (1929), corrected, 155 Miss. 157, 124 So. 268 (1929).

Minutes must show compliance with statute relating to calling special meeting of mayor and aldermen in order for them to transact business. Wilson v. City of Lexington, 153 Miss. 212, 121 So. 859 (1929), corrected, 155 Miss. 157, 124 So. 268 (1929).

2. Jurisdiction.

Where proceeding for levying special assessments was void for failure to comply with the requirements of this section [Code 1942, § 3374-44], taxpayer's appearance for purpose of protest did not confer jurisdiction upon board. Wilson v. City of Lexington, 153 Miss. 212, 121 So. 859 (1929), corrected, 155 Miss. 157, 124 So. 268 (1929).

3. Notice of meeting.

Where notice of a special meeting of the Board of Aldermen was served upon an alderman elect after his right to the office had fully accrued but before he had qualified by taking the oath of office, such service was not defective where he did qualify and participate in the meeting. In re Municipal Bonds, 188 Miss. 817, 196 So. 258 (1940).

Supreme Court can indulge no presumption in favor of officer's return on notice of special meeting of mayor and aldermen, where return is unsigned and contains no statement showing compliance with statute. Wilson v. City of Lexington, 153 Miss. 212, 121 So. 859 (1929), corrected, 155 Miss. 157, 124 So. 268 (1929).

This section requiring that notice of a special meeting shall be served three hours before the time fixed for the meeting is mandatory and jurisdictional and without a compliance therewith proceedings are void. Kidder v. McClanahan, 126 Miss. 179, 88 So. 508 (1921).

ATTORNEY GENERAL OPINIONS

Notice requirements of Section 21-3-21 are jurisdictional, and failure to strictly comply with these requirements when calling a special meeting renders any actions taken during that meeting null and void. Rule, Apr. 8, 2005, A.G. Op. 05-0156.

§ 21-3-23. Duties of street commissioner.

The street commissioner shall, under the direction of the mayor and board of aldermen, have general control of the streets, alleys, avenues, and sidewalks. He shall see that they are always in proper repair. He shall have the same worked, repaired, altered, paved, lighted, sprinkled, and everything else done that ought to be done to keep the same in good repair and condition, and shall perform all other duties that may be required of him by ordinance.

SOURCES: Codes, 1892, § 3000; 1906, § 3397; Hemingway's 1917, § 5925; 1930, § 2534; 1942, § 3374-45; Laws, 1950, ch. 491, § 45, eff from and after July 1, 1950.

Cross References — Duties under council form of government, see § 21-7-15.

ATTORNEY GENERAL OPINIONS

In order to comply with the provisions of Section 21-3-23, the street commissioner has the authority to direct "maintenance personnel" or other municipal employees only to the extent that such employees have been assigned by the mayor or by the mayor and board of alderman to duties relating to the maintenance of streets, alleys, avenues and sidewalks. King, Oct. 28, 2005, A.G. Op. 05-0528.

§ 21-3-25. Chief administrative officer.

(1) Any municipality operating under a "Code Charter" as provided for in Chapter 3, Title 21, Mississippi Code of 1972, may through the mayor and board of aldermen, establish the position of chief administrative officer of the municipality.

(2) The establishment of the position of chief administrative officer shall be by ordinance, and shall require a two-thirds (⅔) vote of the mayor and board of aldermen. Any action taken by the governing authorities to establish such office shall not be adopted within ninety (90) days prior to any regular general election for the election of municipal officers. The chief administrative officer shall be a full time employee of the municipality and shall serve at the discretion of the mayor and board of aldermen. He shall receive such compensation as the mayor and board of aldermen may determine, and shall be chosen solely on the basis of experience and administrative qualifications. The chief administrative officer may hold one (1) or more other appointive positions in the municipality. No person elected to the board of aldermen shall be eligible for the office of chief administrative officer during the term for which such person was elected.

(3) The chief administrative officer shall have such administrative duties and functions as shall be delegated to him by the mayor and board of aldermen.

(4) Following the adoption of an ordinance pursuant to this section, the position of chief administrative officer shall not be established until after the next general municipal election, at which time the first chief administrative officer will be appointed.

(5) Members of the board of aldermen shall have no administrative powers or duties which are delegated by ordinance to the chief administrative officer.

SOURCES: Laws, 1976, ch. 327, eff from and after passage (approved April 22, 1976).

Cross References — For comparable provisions under various forms of government, see §§ 21-8-25 (mayor-council); and 21-9-25 (council-manager).

Surety bond required for certain appointed municipal officers, see § 21-15-38.

ATTORNEY GENERAL OPINIONS

The governing authorities of a code charter municipality in their discretion may appoint an overall supervisor and prescribe his or her duties, which may include supervision of the certified operator in the water/wastewater department. Pittman, June 19, 1998, A.G. Op. #98-0334.

Creation by a city of a new position of "city administrator" by adoption of a resolution giving the individual broad administrative powers would be inconsistent with the provisions of this section and therefore prohibited. Stark, Sept. 6, 2002, A.G. Op. #02-0522.

CHAPTER 5

Commission Form of Government

Sec.
21-5-1. Adoption of commission form of government.
21-5-3. Operation of government under commission form.
21-5-5. Election of mayor and councilmen; qualifications.
21-5-7. Powers and duties of mayor.
21-5-9. Powers and duties of council; surety bond of officers and employees.
21-5-11. Organization of municipal departments.
21-5-13. Meetings of council; quorum; voting.
21-5-15. Fixing of salaries.
21-5-17. Office hours of mayor and councilmen.
21-5-19. Existing laws, rights and liabilities of city unaffected by reorganization.
21-5-21. Election offenses.
21-5-23. Commission form Laws of 1908 not repealed.

§ 21-5-1. Adoption of commission form of government.

Any city may at any time, upon an election held as hereinafter provided, change the form of government of such city and adopt a commission form of government. It shall be the duty of the governing authorities of any such city to call a special election on the question of the adoption of the commission form of government upon receipt of a petition signed by at least ten per cent of the qualified electors of such city, praying that an election be held to determine whether or not such city shall abandon its existing form of government and adopt the commission form. Such special election shall be held in such city not less than thirty days, nor more than sixty days, from the date of making such order, but if a general election is to be held in such city within sixty days from the making of such order, then the question of the adoption of the commission form of government shall be submitted at such general election, rather than at a special election. Notice of such election shall be given as required by law, and the same shall be held and conducted as other elections in such city. At such election the propositions to be voted on shall be "FOR THE PRESENT FORM OF GOVERNMENT," and "FOR THE COMMISSION FORM OF GOVERNMENT." Such propositions shall be printed on the ballot and the elector shall vote by placing a cross (X) or check mark (√) opposite his choice on the proposition. The results of such election shall be certified to the governing authorities of the city by the persons holding such election, and at their next regular meeting the governing authorities shall adjudicate on the minutes of the city whether or not the majority of the votes cast at such election were cast in favor of the commission form of government. If a majority of the votes were so cast in favor of the commission form of government, then an order shall be entered providing for the election of officers provided for by this chapter at an election to be held on the first Tuesday after the first Monday of June next thereafter. The mayor or chief executive officer of the city shall immediately certify to the secretary of state that such city has by election adopted the commission form of government, and such certificate shall be recorded in a book kept for that purpose by the secretary of state. If a majority of the votes cast at such election be in favor of the existing form of government, the governing authorities shall so adjudicate by an order upon their minutes, and another election submitting the question of the adoption of the commission form of government shall not be held for a period of at least four years thereafter.

SOURCES: Codes, Hemingway's 1917, §§ 6038-6040; 1930, §§ 2626-2628; 1942, § 3374-47; Laws, 1912, ch. 120; Laws, 1950, ch. 491, § 47, eff from and after July 1, 1950.

Cross References — Judicial definitions and illustrations generally, see §§ 1-3-1 et seq.

Classification of municipalities, see § 21-1-1.

Designation of municipalities, see § 21-1-9.

Various other forms of municipal government, see §§ 21-3-1 et seq. (code charter); 21-7-1 et seq. (council); 21-8-1 et seq. (mayor-council); and 21-9-1 et seq. (council-manager).

Commission form laws of 1908 not being repealed, see § 21-5-23.

Governing authorities of municipality operating under commission form of government to create and maintain City Employees Retirement Fund, see § 21-29-5.

Effect of change in form of government on authorized retirement system, see § 21-29-55.

Establishment of civil service system in municipalities having commission form of government, see §§ 21-31-1 et seq.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

The City of Greenwood's commission form of government with three council members elected at large violates Section 2 of the Voting Rights Act of 1965, as amended in 1982, 42 U.S.C.S. § 1973 (Supp. 1983); evidence establishes almost every element of proof delineated by Congress as probative of a Section 2 violation, and from a totality of the circumstances, it is inescapably clear that the black voters of Greenwood have less opportunity than whites to participate in the political process and to elect representatives of their choice; the court therefore must require the establishment of single-member districts for the City of Greenwood. Jordan v. City of Greenwood, 599 F. Supp. 397 (N.D. Miss. 1984).

2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

Provision for election in December next after adoption of commission form of government, and every four years thereafter, held applicable only to municipalities adopting commission form after Code became effective. State ex rel. Colmer v. Benvenutti, 162 Miss. 313, 137 So. 537 (1931).

As to appeals from extension of limits of city under commission form of government, see Gregory v. City of Amory, 112 Miss. 604, 73 So. 614 (1917).

The commission form of government act for municipalities is constitutional. Mayor of City of Jackson v. State, 102 Miss. 663, 59 So. 873, Am. Ann. Cas. 1915A,1213 (1912).

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 180 et seq.

18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, etc., Forms 64, 65 (allegations of capacity of plaintiff as taxpayer, and of exercise of official functions by municipal officers).

18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, etc., Forms 131 et seq. (claims, notice and presentation).

18A Am. Jur. Pl & Pr Forms (Rev), Notice, Form 1 (notice, general form).

18A Am. Jur. Pl & Pr Forms (Rev), Notice, Forms 14, 15 (affidavit of notice by posting or publication).

CJS. 62 C.J.S., Municipal Corporations § 268 et seq.

Law Reviews. Mississippi and the Voting Rights Act: 1965-1982. 52 Miss. L. J. 803, December 1982.

§ 21-5-3. Operation of government under commission form.

Every city operating under the commission form of government shall be governed by a council, consisting of the mayor and two (2) councilmen (or commissioners), each of whom shall have the right to vote on all questions coming before the council. The terms of office of the governing authorities in every such city, in office at the beginning of the term of office of the mayor and councilmen first elected under the provisions of this chapter shall then immediately cease and terminate. The terms of office of all other officers then in force in such city, whether elected or appointed, shall cease and terminate as soon as the council shall, by resolution, so declare.

The corporate name of every such city shall be "The City of (name of city)," under which name the council shall exercise and perform all the corporate powers, duties and obligations conferred or imposed on it or the members thereof.

Any city having a population of one hundred thousand (100,000) inhabitants according to the last decennial census and at that time governed by the commission form of government, may at any time, upon an election held as hereinafter provided, increase by two (2) the number of councilmen governing such city; provided that in no event shall the number of councilmen (not including the mayor) be increased to exceed ten (10) members. It shall be the duty of the council to call a special election on the question of the increase in the number of councilmen and upon receipt of a petition signed by at least ten percent (10%) of the qualified electors of such city, praying that an election be held to determine whether or not such city should increase by two (2) the number of councilmen under the commission form, and such special election shall be held in such city not less than thirty (30) days, nor more than sixty (60) days, from the date of making such order; but if a general election is to be held in such city within sixty (60) days from the making of such order, then the question of the increase in number of councilmen shall be submitted at such general election, rather than at a special election. Notice of such election shall be given as required by law, and the same shall be held and conducted as other elections in such city. At such election the propositions to be voted on shall be "FOR THE PRESENT NUMBER OF COUNCILMEN" and "FOR AN INCREASE BY TWO (2) IN THE NUMBER OF COUNCILMEN," and such propositions shall be printed on the ballot and the elector shall vote by placing a cross (X) or check mark (√) opposite his choice on the proposition. The results of such election shall be certified to the governing authorities of the city by the persons holding such election, and at their next regular meeting the governing authorities shall adjudicate on the minutes of the city whether or not the majority of the votes cast at such election were cast in favor of increasing by two (2) the number of councilmen. If a majority of the votes were so cast in favor of increasing by two (2) the number of councilmen in the commission form of government, then an order shall be entered providing for the election of the two (2) additional councilmen at an election to be held on the first Tuesday after the first Monday of June next thereafter. The mayor of the city shall immediately certify to the secretary of state that such city has by election determined to be governed by two (2) additional councilmen in the commission form of government and such certificate shall be recorded in a book kept for that purpose by the secretary of state. If a majority of the votes cast at such election be in favor of retaining the existing number of councilmen, the council shall so adjudicate by an order upon their minutes, and another election submitting the question of the increasing by two (2) the number of councilmen in the commission form of government shall not be held for a period of at least four (4) years thereafter.

SOURCES: Codes, Hemingway's 1917, § 6042; 1930, § 2630; 1942, § 3374-48; Laws, 1912, ch. 120; Laws, 1950, ch. 491, § 48; Laws, 1973, ch. 328, § 26, eff from and after January 1, 1974.

Cross References — Corporate names generally, see § 21-1-5.

For comparable provisions under various other forms of government, see §§ 21-7-7 (council); 21-8-7, 21-8-37 (mayor-council); and 21-9-15 through 21-9-19, and 21-9-35 (council-manager).

RESEARCH REFERENCES

ALR. What constitutes requisite majority of members of municipal council voting on issue. 43 A.L.R.2d 698.

Abstention from voting of member of municipal council present at session as affecting requisite voting majority. 63 A.L.R.3d 1072.

§ 21-5-5. Election of mayor and councilmen; qualifications.

The mayor and councilmen (or commissioners) of all cities operated under the commission form of government shall be elected from the city at large, but the municipal authorities may establish as many wards and as many voting precincts in each ward as may be necessary or desirable. No person shall be eligible to the office of mayor or councilman unless he is a qualified elector of such city and shall have been a bona fide resident thereof for a period of at least one year next preceding the date of the commencement of his term of office.

In the event the council should ordain that the councilmen posts shall be separated, as provided in Section 21-5-11, such post shall be so separated for election purposes and persons seeking the office of councilman shall qualify and seek election for a specific post, as designated by ordinance, and each post shall be voted on separately by the qualified electors of the municipality voting in said election.

In the event there should be but one candidate for one of such election posts, or only one candidate for each of such posts, then such candidate or candidates shall be declared to be elected.

SOURCES: Codes, Hemingway's 1917, § 6041; 1930, § 2629; 1942, § 3374-55; Laws, 1912, ch. 120; Laws, 1924, ch. 199; Laws, 1928, ch. 184; Laws, 1932, ch. 219; Laws, 1940, ch. 286; Laws, 1950, ch. 491, § 55; Laws, 1958, ch. 521, § 2.

Cross References — When the governor may fill vacancies in municipal elective offices, see § 7-1-39.

For comparable provisions under various forms of government, see §§ 21-3-7 (code charter); 21-7-7 (council); 21-8-7, 21-8-21 (mayor-council); and 21-9-15 and 21-9-17 (council-manager).

Municipal elections generally, see §§ 23-15-13, 23-15-35, 23-15-171, 23-15-173, 23-15-559, 23-15-857 and 23-15-859.

Elected person's failure to qualify, see § 25-1-7.

Taking of oaths and filing of bonds, see §§ 25-1-9 et seq.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

Where city councilman's term expired two days after resignation and remaining city officers constituted a quorum for transaction of municipal affairs, vacancy created was not such an "emergency" as to justify an appointment by governor on failure of remaining city officers to name a successor. State ex rel. Parks v. Tucei, 175 Miss. 218, 166 So. 370 (1936).

Proceeding to try right to office of councilman instituted in name of state on relation of claimant is in the nature of a private action, in which claimant must succeed on strength of his own claim. State ex rel. Parks v. Tucei, 175 Miss. 218, 166 So. 370 (1936).

Provision for election in December next after adoption of commission form of government, and every four years thereafter, held applicable only to municipalities adopting commission form after Code became effective. State ex rel. Colmer v. Benvenutti, 162 Miss. 313, 137 So. 537 (1931).

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties and Other Political Subdivisions § 181.

CJS. 62 C.J.S., Municipal Corporations §§ 273-280.

§ 21-5-7. Powers and duties of mayor.

The mayor shall be president of the council and preside at all meetings thereof, but he shall not have any power to veto any measure passed by the council. He shall have general supervision of all the affairs and departments of the city government and shall, from time to time, as occasion may demand, report in writing to the council any matters requiring its action. The council shall elect one of its members vice-president of the council, who, in case of a vacancy in the office of mayor, or in the absence or inability of the mayor, shall perform the duties of the mayor.

SOURCES: Codes, Hemingway's 1917, § 6050; 1930, § 2638; 1942, § 3374-52; Laws, 1912, ch. 120; Laws, 1950, ch. 491, § 52, eff from and after July 1, 1950.

Cross References — For comparable provisions under various forms of government, see §§ 21-3-13, 21-3-15 (code charter); 21-7-7, 21-7-13 (council); 21-8-15, 21-8-17, 21-8-21 (mayor-council); and 21-9-15 and 21-9-37 (council-manager).

Other specific powers and duties of mayor, see §§ 21-15-7 through 21-15-15.

Powers of governing authorities, see § 21-17-5.

Duty of mayor to notify governor whenever local resources inadequate to cope with emergencies, see § 33-7-301.

Emergency powers under civil defense law, see §§ 33-15-1 et seq.

Appointment of extra deputies and police officers, see § 45-5-9.

§ 21-5-9. Powers and duties of council; surety bond of officers and employees.

Except as limited by law, the council shall have, exercise, and perform all executive, legislative and judicial powers, duties and obligations bestowed upon governing authorities of municipalities by this title or by any other general law with regard to municipalities, except in cases of conflict between such laws and this chapter, in which case this chapter shall control. The council shall also have the power, from time to time, to create, fill or discontinue any and all offices and employments other than those created in this chapter; to increase or decrease the emoluments thereof; to make all needful rules and regulations for the government of the officers and employees of such city and to enforce a strict observance thereof, and to change the same when deemed necessary; to remove any officer or employee elected or appointed by the council, except as limited by law, and to elect or appoint a successor; to issue and sell the bonds or other obligations of such city in the amounts and in the manner provided by law; and generally to enact and enforce all ordinances and resolutions, and to make and perform all contracts for and on behalf of such city, as may be authorized by law or by the charter of such city.

The council shall also require all officers and employees handling or having the custody of any of the public funds of such city to give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in an amount to be determined by the council (which shall not be less than Ten Thousand Dollars ($10,000.00)), the premiums on which bonds shall be paid by the city.

SOURCES: Codes, Hemingway's 1917, § 6051; 1930, § 2639; 1942, § 3374-53; Laws, 1912, ch. 120; Laws, 1950, ch. 491, § 53; Laws, 1986, ch. 458, § 23; Laws, 1988, ch. 488, § 3, eff from and after passage (approved April 30, 1988).

Cross References — For comparable provisions under various forms of government, see §§ 21-3-15 (code charter); 21-7-11 (council); 21-8-13, 21-8-23 (mayor-council); and 21-9-21 and 21-9-35 (council-manager).

Surety bond required for certain appointed municipal officers, see § 21-15-38.

Powers of governing authorities generally, see § 21-17-5.

Civil liability of officers failing to perform duty, see § 25-1-45.

Authority to lease lands to the United States for the purpose of securing construction of air national guard armories, see § 33-11-15.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

A city ordinance which required members of fire and police departments and other civil service employees to maintain their domicile and place of residence within the corporate limits of the city, was not in conflict with a state statute requiring civil service applicants to be citizens of the United States and electors of the county in which they reside, with 3 years' residence, but was instead an additional regulation within the power of municipalities operating under the commission form of government by virtue of statutes authorizing such municipalities to make necessary rules and regulations for the government of the officers and employees of the city and for the efficient and economical conduct of the city's business. Hattiesburg Firefighters Local 184 v. City of Hattiesburg, 263 So. 2d 767 (Miss. 1972).

2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

An earlier charter provision in the charter of the city of Meridian, imposing personal liability upon municipal officers for appropriating money to any object not authorized by the charter, was carried forward when the city assumed the commission form of government. Paine v. Matthews, 213 Miss. 506, 57 So. 2d 148 (1952).

Where money was paid out of the treasury with no authorization or appropriation by the council, the mayor and members of the council were not liable for the unauthorized act of the city manager and city treasurer in unlawfully paying out the city funds and an ordinance could be effective as a ratification only if the funds could have been lawfully appropriated in the first instance. Paine v. Matthews, 213 Miss. 506, 57 So. 2d 148 (1952).

Laws 1944, ch. 208 (§§ 3825-01 et seq., Supp to 1942 Code), do not withdraw from municipalities any of the powers conferred by this section, but, where a fireman's position has been abolished, determine only his rights. City of Laurel v. Reddoch, 200 Miss. 259, 26 So. 2d 465 (1946).

Under this section, a municipality acting under the commission form of government has all the powers possessed by other municipalities except as otherwise provided by statute. Independent Paving Co. v. City of Bay St. Louis, 74 F.2d 961 (5th Cir. 1935).

§ 21-5-11. Organization of municipal departments.

The executive and administrative powers and duties in such cities shall be distributed into and among as many departments as there shall be members of the council, to be defined and designated by ordinance. The council shall, by ordinance, determine the powers and duties to be exercised and performed by each department, and shall assign the various officers and employees of the city to the appropriate department. The council shall prescribe the powers and duties of such officers and employees and make all such rules and regulations as may be necessary or proper for the efficient and economical conduct of the business of the city. The council shall, by a majority vote, designate one member of the council to be superintendent of each department of the municipal government, and shall define his powers and duties as such superintendent. Such designation may be changed whenever it shall appear that the public service may be benefited thereby unless the councilmen had been elected to head the department as hereinafter provided.

The council may, by ordinance, provide that the commissioners be designated by Post No. 1 and Post No. 2, and by ordinance define the duties which shall be performed by the commissioners elected to each post.

In the event a city with the population in excess of one hundred thousand (100,000) inhabitants or more according to the last decennial census and being governed by the commission form of government shall elect pursuant to Section 21-5-3, Mississippi Code of 1972, to have additional councilmen, the council may, by ordinance, provide that the councilmen or commissioners be designated by post numbers, said posts to be numbered consecutively from one (1) upward, and by ordinance define the duties which shall be performed by the commissioners elected to each post.

SOURCES: Codes, Hemingway's 1917, § 6052; 1930, § 2640; 1942, § 3374-54; Laws, 1912, ch. 120; Laws, 1950, ch. 491, § 54; Laws, 1958, ch. 521, § 1; Laws, 1973, ch. 328, § 27, eff from and after January 1, 1974.

Cross References — Councilmen's posts being separated for election purposes, see § 21-5-5.

For comparable provisions under various forms of government, see §§ 21-7-11 (council); 21-8-23 (mayor-council); and 21-9-21 (council-manager).

§ 21-5-13. Meetings of council; quorum; voting.

(1) Regular public meetings of the council shall be held on the first day of July after the election of the mayor and councilmen (or commissioners) that is not on a weekend, and thereafter at least twice each month, at such time as the council may by resolution provide. When a regular meeting of the council shall fall on a holiday, the council shall meet the following day.

Special meetings may be called at any time by the mayor or by two (2) councilmen. At any and all meetings of the council, a majority of all the members thereof shall constitute a quorum. The quorum required by this section may be established by teleconference or video means as provided in Section 25-41-5(2)(b). The affirmative vote of a majority of all the members of the council shall be necessary to adopt any motion, resolution or ordinance, or to pass any measure whatever, unless a greater number is provided for in this chapter. Upon every vote taken by the council, the yeas and nays shall be called and recorded, and every motion, resolution or ordinance shall be reduced to writing before the vote is taken thereon. Upon request of one or more council members, any motion, resolution or ordinance shall be read by the clerk before the vote is taken thereon.

(2) The council may, pursuant to Section 21-17-17, set a day other than Monday for the holding of its regular bimonthly meeting.

SOURCES: Codes, Hemingway's 1917, § 6049; 1930, § 2637; 1942, § 3374-51; Laws, 1912, ch. 120; Laws, 1950, ch. 491, § 51; Laws, 1973, ch. 324, § 2; Laws, 1979, ch. 403, § 3; Laws, 1987, ch. 503, § 1; Laws, 2010, ch. 319, § 4; Laws, 2012, ch. 442, § 3, eff September 20, 2012 (the date the United States Attorney General determined the amendment of this section was not subject to Section 5 of the Voting Rights Act of 1965.)

Editor's Note — By letter dated July 22, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 319, § 4.

By letter dated September 20, 2012, the United States Attorney General determined that the amendments to this section by Chapter 442, Laws of 2012, were not subject to preclearance under Section 5 of the Voting Rights Act of 1965, as amended and extended.

Cross References — Moving municipality's site of government in emergency resulting from enemy attack, see §§ 17-7-1 et seq.

Meetings of governing authorities under various forms of government, see §§ 21-3-19 (code charter); 21-7-9 (council); 21-8-11 (mayor-council); and 21-9-39 (council-manager).

Requirement of open and public meetings, see §§ 25-41-1 et seq.

ATTORNEY GENERAL OPINIONS

In a special charter municipality, where the mayor is counted for purposes of establishing a quorum, but does not have the power to vote except to break a tie, a majority of the quorum is sufficient to adopt a measure, and a majority of the voting members of the commission is not required. Twiford, Feb. 21, 2003, A.G. Op. #03-0044.

§ 21-5-15. Fixing of salaries.

At the first regular meeting of the council that is first elected, or as soon thereafter as practicable, the council shall, by ordinance, fix the salary of the mayor and each of the councilmen (or commissioners), which ordinance shall not become operative until the same shall have been approved by a majority of the qualified electors voting at an election to be held for that purpose, as provided by this section. Said ordinance shall be published in a newspaper published in said city, and having a general circulation therein, for at least ten days before such election, and notice of the date of such election shall be given by the council for ten days by publication in a newspaper published in such city, and having general circulation therein. In case such ordinance shall be rejected by the electors at such election, then a new ordinance, or ordinances, may be passed by the council and submitted to the electors in like manner, until the same shall have been ratified by the electors. When an ordinance so fixing the salaries shall have been finally adopted and approved, the salaries so fixed shall remain in effect until altered or changed in the manner hereinafter provided.

To reduce the salary so fixed it shall be sufficient that the council adopt an ordinance to that effect, which ordinance shall become effective upon adoption without the necessity of publication or of an election. To increase the salary so fixed, an ordinance shall be duly adopted, by the council, which ordinance shall be published for ten days in a newspaper published or having a general circulation in such city, and the ordinance shall not become effective until it shall have been approved by a majority of the qualified electors of such city voting at an election to be held for that purpose after notice of such election shall have been given by the council for ten days by publication in a newspaper published in such city or having a general circulation therein, the last notice to appear not more than one week next prior to the date of the election.

Every officer or assistant, other than the mayor and councilmen, shall receive such salary or compensation as the council shall by ordinance provide. The salary or compensation of all other employees of such city shall be fixed by the council from time to time, as occasion may demand.

SOURCES: Codes, Hemingway's 1917, § 6046; 1930, § 2634; 1942, § 3374-49; Laws, 1912, ch. 120; Laws, 1932, ch. 224; Laws, 1950, ch. 491, § 49; Laws, 1954, ch. 346, § 1.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

The action of the mayor and councilmen of a municipality in placing the order on the minutes of the city council, signifying their desire and purpose to exercise the power conferred by statute of reducing their salaries to a certain sum per month, and in their answer evidencing such intention by accepting a warrant each month for such reduced amount over a considerable period of time, constituted a substantial compliance with the provisions of the statute and was sufficient to effectuate the reduction of their salaries. Chinn v. City of Biloxi, 183 Miss. 27, 183 So. 375 (1938).

The word "ordinance" as used in the statute does not contemplate an ordinance to be published and then enrolled in the ordinance book, and the act of recording a reduction in salary of the mayor and councilmen of a municipality on the minutes of the civic council was a sufficient "ordinance" within the meaning of the statute. Chinn v. City of Biloxi, 183 Miss. 27, 183 So. 375 (1938).

It is the duty of the commissioners to fix the salary of the mayor and councilmen permanently and they have no power to bind the salary to one year, and the ordinance fixing salaries shall not be altered or repealed unless approved by the qualified electors of the city. Lewis v. Jane, 129 Miss. 475, 92 So. 625 (1922).

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

Am Jur. 18A Am. Jur. Pl & Pr Forms (Rev), Notice, Form 1 (notice, general form).

18A Am. Jur. Pl & Pr Forms (Rev), Notice, Forms 24, 25 (affidavit of notice of posting or publication).

§ 21-5-17. Office hours of mayor and councilmen.

The mayor and councilmen (or commissioners) shall have an office in the city hall, and shall have regular office hours each day, except Sundays and legal holidays, which said office hours shall be fixed by ordinance.

It shall be the duty of the mayor and councilmen to efficiently and economically administer every department of the city government, and they shall devote as much of their time to the business of the city as shall be necessary to accomplish that result. The council shall, by resolution, fix the hours of service of all other officers and employees.

SOURCES: Codes, Hemingway's 1917, § 6048; 1930, § 2636; 1942, § 3374-50; Laws, 1912, ch. 120; Laws, 1950, ch. 491, § 50, eff from and after July 1, 1950.

§ 21-5-19. Existing laws, rights and liabilities of city unaffected by reorganization.

All laws governing cities heretofore operating under another form of government not inconsistent with the provisions of this chapter respecting the commission form of government shall apply to and govern such cities respectively when they shall come under the said commission form. All bylaws, ordinances, and resolutions lawfully passed and in force in every such city under its former organization, shall remain in force until altered or repealed by the council elected under the provisions of this chapter. The territorial limits of every such city shall remain the same as under its former organization, and all rights and property of every description, which were vested in every such city, under its former organization, shall vest in the same under the organization contemplated by the commission form of government. No right or liability, either in favor of or against such city, and no suit or prosecution of any kind shall be affected by such change, unless otherwise provided.

SOURCES: Codes, Hemingway's 1917, § 6059; 1930, § 2647; 1942, § 3374-56; Laws, 1912, ch. 120; Laws, 1950, ch. 491, § 56, eff from and after July 1, 1950.

Cross References — For comparable provisions under various forms of government, see §§ 21-7-17 (council); 21-8-33 and 21-8-35 (mayor-council); and 21-9-75 and 21-9-77 (council-manager).

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

An earlier charter provision in the charter of the city of Meridian, imposing personal liability upon municipal officers for appropriating money to any object not authorized by the charter, was carried forward when the city assumed the commission form of government. Paine v. Matthews, 213 Miss. 506, 57 So. 2d 148 (1952).

§ 21-5-21. Election offenses.

Any officer or employee other than the mayor and councilmen (or commissioners) of any such city who shall solicit or attempt to influence any person to vote for any particular candidate at any election held in such city, or who shall in any manner contribute any money, labor or other valuable thing to any person or organization for election purposes, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding thirty days, or by both such fine and imprisonment.

SOURCES: Codes, Hemingway's 1917, § 6061; 1930, § 2649; 1942, § 3374-57; Laws, 1912, ch. 120; Laws, 1950, ch. 491, § 57 eff from and after July 1, 1950.

Cross References — Election offenses in connection with other forms of government, see § 21-8-31 (mayor-council); and 21-9-71 (council-manager).

Conservation officers prohibited from engaging in political campaigns, see § 49-1-19.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. Reviewability before trial of order denying qualified immunity to defendant sued in state court under 42 USCS § 1983. 49 A.L.R.5th 717.

Actionability, under 42 USCS § 1983, of claim arising out of maladministration of election. 66 A.L.R. Fed. 750.

Am Jur. 26 Am. Jur. 2d, Elections §§ 459, 464.

CJS. 29 C.J.S., Elections §§ 540 et seq.

§ 21-5-23. Commission form Laws of 1908 not repealed.

Nothing in this chapter shall be construed in any way to affect, alter or modify the existence of municipalities now operating under Chapter 108 of the Laws of 1908. Such municipalities shall continue to enjoy the form of government now enjoyed by them, and each shall be possessed of all rights, powers, privileges and immunities granted and conferred by Chapter 108 of the Laws of 1908. The mayor and commissioners of all municipalities now operating under Chapter 108 of the Laws of 1908 shall hold their offices for a term of four (4) years, and until their successors are duly elected and qualified. The officers shall qualify and enter upon the discharge of their duties on the first day of July after such general election that is not on a weekend, and shall hold their office for four (4) years, and until their successors are duly elected and qualified.

SOURCES: Codes, 1930, § 2656; 1942, § 3374-58; Laws, 1932, ch. 219; Laws, 1950, ch. 491, § 58; Laws, 2010, ch. 319, § 1, eff July 22, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated July 22, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 319, § 1.

JUDICIAL DECISIONS

1. In general.

Provision for election in 1932, and every four years thereafter, held applicable to municipalities which had adopted commission form of government before Code became effective. State ex rel. Colmer v. Benvenutti, 162 Miss. 313, 137 So. 537 (1931).

CHAPTER 7

Council Form of Government

Sec.
21-7-1. Adoption of council form by certain municipalities authorized.
21-7-3. Applicability of "code charter" provisions.
21-7-5. Procedure for adoption or abandonment of plan.
21-7-7. Members of the council; their election and compensation.
21-7-9. Meetings of council; quorum; voting.
21-7-11. Powers of council; surety bond of officers and employees.
21-7-13. Powers and duties of mayor.
21-7-15. Election of vice-mayor and other officers; duties.
21-7-17. Existing law, rights and liabilities of city unaffected by reorganization.
21-7-19. Chapter cumulative to other laws.

§ 21-7-1. Adoption of council form by certain municipalities authorized.

Notwithstanding anything to the contrary in this title any municipality in this state having a population, according to the 1940 official federal census exceeding 8,000, but not exceeding 9,600, and operating under "code charter" as defined by chapter 3 of this title, may as hereinafter set forth, change its form of government to a plan of government hereby designated as the "council form" in order to place in the council of any municipality, operating under such form, full and complete executive and legislative powers over its entire municipal affairs.

SOURCES: Codes, 1942, § 3825.7-01; Laws, 1948, ch. 382, § 1.

Cross References — Classification of municipalities, see § 21-1-1.

Designation of municipalities, see § 21-1-9.

Various other forms of municipal government, see §§ 21-3-1 et seq. (code charter); 21-5-1 et seq. (commission); 21-8-1 et seq. (mayor-council); and 21-9-1 et seq. (council-manager).

Procedure by which municipality may change to council form of government, see § 21-7-5.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 141 et seq.

18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, etc., Forms 64, 65 (allegations of capacity of plaintiff as a taxpayer, and of exercise of official functions by municipal officers).

18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, etc., Forms 131 et seq. (claims, notice and presentation).

CJS. 62 C.J.S., Municipal Corporations § 268 et seq.

§ 21-7-3. Applicability of "code charter" provisions.

All of the provisions of law applicable to municipalities operating under "code charter" as aforesaid, which are not inconsistent with the provisions of this chapter, shall apply fully to the form of government to be established hereunder. However, such cities coming under the council form shall not be included in those classes of cities set forth in Section 21-29-151, unless and until the council shall have adopted a resolution setting forth their intention to come under Sections 21-29-101 through 21-29-151. All provisions of law vesting rights, privileges and powers in and charging with duties the mayor and/or board of aldermen are hereby specifically vested in the council of municipalities which shall operate under the provisions of this chapter.

SOURCES: Codes, 1942, §§ 3825.7-02, 3825.7-09; Laws, 1948, ch. 382, §§ 2, 9.

Cross References — For comparable provisions under council-manager plan of government, see § 21-9-77.

§ 21-7-5. Procedure for adoption or abandonment of plan.

The manner in which any municipality, within the class provided in Section 21-7-1 may change its form of government to the plan authorized herein, shall be as follows:

One or more petitions, similar in form and substance, addressed to the mayor praying that an election be held to determine whether or not such city shall abandon its existing form of government and become organized under a council form of government, signed by at least twenty per centum of the qualified electors of such city, shall be filed with the city clerk, who shall deal with the same as required with reference to other petitions.

If on the delivery of such petition to the mayor, it shall appear that such petition or petitions have not been signed by the required number of qualified electors of such city, the mayor shall at once certify such fact and immediately return such petition or petitions to the person or persons presenting the same, who may thereafter procure additional signers thereto and again file such petition or petitions with the city clerk, as above provided, as an original petition.

If it shall appear at any time from the certificate of the city clerk that said petition or petitions have been signed by the requisite number of qualified electors of said city, the mayor shall immediately refer the same to the board of aldermen. If it shall appear that said petition or petitions are in proper form and have been sufficiently signed by the qualified electors of such city, they shall, within thirty days, order, and provide, for the holding of a special election in such city, to be held, not less than thirty, nor more than sixty days, from the date of making such order, notice of which election shall be given, and the same shall be held and conducted as other elections in such city. At such special election the propositions to be voted for shall be: "FOR THE COUNCIL FORM OF GOVERNMENT" and "FOR THE PRESENT FORM OF GOVERNMENT," which propositions shall be printed on the official ballot at such election. As soon as the return of such election shall have been certified by the persons holding the same, the board of aldermen shall at their next regular meeting, consider the same, and if a majority of the votes cast at such election, are in favor of the council form of government, then they shall enter an order providing for the election of a mayor, a vice-mayor and five other councilmen provided for under Section 21-7-7, at an election to be held on the second Tuesday in December next before the expiration of the terms of the municipal officers then holding office. Thereupon the said petition or petitions, and all proceedings had thereon, including an order of the mayor and board of aldermen that the form of government will be changed on the first Monday of January following the expiration of their term of office, shall be recorded in the ordinance book of such city, which record shall be evidence of all the matters and things therein contained. The mayor of such city shall immediately certify to the secretary of state that such city by special election has adopted the system of government provided for herein, which certificate shall be recorded in a book kept for that purpose by the secretary of state. In case it shall appear by said election returns that a majority of the votes cast at such election were in favor of the existing form of government, then the board of aldermen shall dismiss the petition, in which case no similar petition shall be filed for a period of one year from the date of such order, but nothing short of such election shall preclude the filing of the petition at any time.

Any city which shall have operated for more than two years under the council form of government may abandon such form of government and return to the code charter form of government by substantially the same procedure through petitions and elections as herein provided for change to the council form of government. Such change, however, shall take effect on the first Monday of January following the expiration of the term of office of the members of the council then holding office.

SOURCES: Codes, 1942, § 3825.7-08; Laws, 1948, ch. 382, § 8.

Cross References — Proceedings for adoption of various other forms of government, see §§ 21-3-1 (code charter); 21-5-1 (commission); 21-8-3 and 21-8-5 (mayor-council); and 21-9-3, 21-9-5, and 21-9-9 (council-manager).

RESEARCH REFERENCES

Am Jur. 18A Am. Jur. Pl & Pr Forms (Rev), Notice, Form 1 (notice, general form).

18A Am. Jur. Pl & Pr Forms (Rev), Notice, Forms 24, 25 (affidavit of notice by posting or publication).

§ 21-7-7. Members of the council; their election and compensation.

The governing body of any such municipality shall be a council, known and designated as such, consisting of seven members. One of the members shall be the mayor, having the qualifications as prescribed by Section 21-3-9, who shall have full rights, powers and privileges of other councilmen. The mayor shall be nominated and elected at large; the remaining councilmen shall be nominated and elected one from each ward into which the city shall be divided. However, if the city be divided into less than six wards, the remaining councilmen shall be nominated and elected at large. The councilmen, including the mayor, shall be elected for a term of four years to serve until their successors are elected and qualified in accordance with the provisions of Section 21-11-7, said term commencing on the first Monday of January after the municipal election first following the adoption of the form of government as provided by this chapter.

The compensation for the members of the council shall, for the first four years of operation, under this chapter, be fixed by the board of mayor and aldermen holding office prior to the change in form of government. Thereafter the amount of compensation for each such member may be increased or decreased by the council, by council action taken prior to the election of members thereof for the ensuing term, such action to become effective with the ensuing terms.

SOURCES: Codes, 1942, § 3825.7-03; Laws, 1948, ch. 382, § 3.

Editor's Note — Section 21-11-7 referred to in this section was repealed by Laws, 1986, ch. 495, § 329, eff from and after January 1, 1987. For comparable provisions, see § 23-15-173.

Laws, 1979, ch. 452, § 26, amended this section, contingent on being effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended. Chapter 452 never became effective and was repealed by Laws, 1982, ch. 477, § 7, effective from and after April 22, 1982.

Cross References — Procedure by which municipality may change to council form of government, see § 21-7-5.

Election of councilmen and mayor under various other forms of government, see §§ 21-3-7 (code charter); 21-5-5 (commission); 21-8-7 and 21-8-21 (mayor-council); and 21-9-15 through 21-9-19, 21-9-61 (council-manager).

Municipal elections generally, see §§ 23-15-13, 23-15-35, 23-15-171, 23-15-173, 23-15-559, 23-15-857 and 23-15-859.

JUDICIAL DECISIONS

1. In general.
2. Relationship to other laws.

1. In general.

Under this section, a member of a city's board of aldermen who was defeated in his bid for reelection was nevertheless entitled to retain his position until another election could be held where the election resulting in his defeat had been declared null and void due to election fraud. Crowe v. Lucas, 595 F.2d 985 (5th Cir. 1979).

2. Relationship to other laws.

In a 42 U.S.C.S. § 1983 case in which a contractor and its assignee sued a city following the cancellation of a contract which had been extended for 24 months by the former mayor and board of alderman (board) and cancelled by the new mayor and board, the contractor and its assignee unsuccessfully argued that Miss. Code Ann. § 21-7-7 authorized the original board to agree to the term extension. Under Miss. Code Ann. § 31-7-13(n)(i), the contract extension was an ultra vires act in the sense that the former mayor and board could not legally agree to bind the new mayor and board to the contract. ECO Res., Inc. v. City of Horn Lake, — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 55280

(N.D. Miss. June 11, 2009), affirmed by 379 Fed. Appx. 326, 2010 U.S. App. LEXIS 10183 (5th Cir. Miss. 2010).

ATTORNEY GENERAL OPINIONS

Because city's Tourism Commission is part of executive branch of government and city council member is member of legislative branch of government, separation of powers doctrine prohibits such council member from serving on Tourism Commission. Criss, August 26, 1992, A.G. Op. #92-0563.

RESEARCH REFERENCES

ALR. "At-Large" elections as violation of § 2 of Voting Rights Act of 1965 (42 USCS § 1973). 92 A.L.R. Fed. 824.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 151-153.

CJS. 62 C.J.S., Municipal Corporations §§ 273-280.

§ 21-7-9. Meetings of council; quorum; voting.

(1) Regular public meetings of the council shall be held on the first Tuesday after the first Monday in January after the election of the members of the council and monthly thereafter on the first Tuesday in each month. When a regular meeting of the council shall fall upon a holiday, the council shall meet the following day. Special meetings may be called at any time by the mayor or by three (3) members of the council. At any and all meetings of the council, five (5) members thereof shall constitute a quorum. The quorum required by this section may be established by teleconference or video means as provided in Section 25-41-5(2)(b). The affirmative vote of a majority of the members of the quorum at any meeting shall be necessary to adopt any motion, resolution, or ordinance or to pass any measure whatever unless otherwise provided in this chapter. Upon every vote taken by the council the yeas and nays shall be called and recorded and every motion, resolution, or ordinance shall be reduced to writing before the vote is taken thereon. Upon request of one or more council members, any motion, resolution or ordinance shall be read by the clerk before the vote is taken thereon.

(2) The council may, pursuant to Section 21-17-17, set a day other than Tuesday for the holding of its regular monthly meeting.

SOURCES: Codes, 1942, § 3825.7-04; Laws, 1948, ch. 382, § 4; Laws, 1973, ch. 324, § 4; Laws, 1979, ch. 403, § 4; Laws, 1987, ch. 503, § 2; Laws, 2012, ch. 442, § 4, eff September 20, 2012 (the date the United States Attorney General determined the amendment of this section was not subject to Section 5 of the Voting Rights Act of 1965.)

Editor's Note — By letter dated September 20, 2012, the United States Attorney General determined that the amendments to this section by Chapter 442, Laws of 2012, were not subject to preclearance under Section 5 of the Voting Rights Act of 1965, as amended and extended.

Cross References — Moving municipality's site of government in emergency resulting from enemy attack, see §§ 17-7-1 et seq.

Meetings of governing authorities under various forms of government, see §§ 21-3-19 (code charter); 21-5-13 (commission); 21-8-11 (mayor-council); and 21-9-39 (council-manager).

Requirement of open and public meetings, see §§ 25-41-1 et seq.

RESEARCH REFERENCES

ALR. Abstention from voting of member of municipal council present at session as affecting requisite voting majority. 63 A.L.R.3d 1072.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 156 et seq.

CJS. 62 C.J.S., Municipal Corporations §§ 248, 296 et seq., 308-312 et seq.

§ 21-7-11. Powers of council; surety bond of officers and employees.

The full and complete executive and legislative powers of the municipality as vested by law, or inherent, shall be vested in such council. The council, however, may delegate such of its administrative functions as it deems proper and necessary to such officials so elected by it as provided in Section 21-7-15, and in addition may delegate administrative powers and functions to such other person or persons as may be selected by said council in order to carry out its functions, whether municipal or proprietary, which would permit the efficient administration of its municipal affairs. Said council has the right to select, appoint or designate departmental heads, such as but not limited to superintendent of utilities, superintendent of public health and sanitation, superintendent of fire and safety, superintendent of parks and recreation, superintendent of public buildings and grounds, and such other departmental heads as the council may deem best and proper. Said council has the power to fix the compensation of all such persons so selected and to define their duties, obligations and responsibilities. The council shall also require all officers and employees handling or having the custody of any public funds of such city to give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in an amount to be determined by the council (which shall not be less than Ten Thousand Dollars ($10,000.00)). Any and all such persons so selected shall be accountable to the council and shall make report, or reports, to the council so often as is required of them respectively, and may be removed at any time for cause after first having been given an opportunity for a hearing on the reasons for removal. No member of the council shall be eligible for selection to any such office or position.

SOURCES: Codes, 1942, § 3825.7-07; Laws, 1948, ch. 382 § 7; Laws, 1986, ch. 458, § 24; Laws, 1988, ch. 488, § 4, eff from and after passage (approved April 30, 1988).

Cross References — For comparable provisions under various other forms of government see §§ 21-3-15 (code charter); 21-5-9 (commission); 21-8-13 and 21-8-23 (mayor-council); and 21-9-21, 21-9-31 and 21-9-35 (council manager).

Surety bond required for certain appointed municipal officers, see § 21-15-38.

General powers of governing authorities, see § 21-17-5.

Authority to lease lands to the United States for the purpose of securing construction of air national guard armories, see § 33-11-15.

RESEARCH REFERENCES

ALR. Payment of attorneys' services in defending action brought against officials individually as within power or obligation of public body. 47 A.L.R.5th 553.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 154, 155.

CJS. 62 C.J.S., Municipal Corporations §§ 150-184.

§ 21-7-13. Powers and duties of mayor.

The powers and duties heretofore conferred upon the mayor of municipalities by law are hereby conferred upon and charged to the council. The mayor, or in his absence the vice-mayor, shall (a) as chairman preside at all meetings of the council, and shall have veto power, in writing, giving his reasons therefor, of any measure passed by the council, although a measure vetoed may be adopted notwithstanding, if two-thirds of the council vote therefor; (b) represent the municipality in all functions political, social or economic, but he shall in no wise bind the municipality, other than as he may be specifically authorized or delegated to do by the council, as reflected by its orders, resolutions or ordinances; (c) execute for and on behalf of the council, all documents or instruments of writing, of whatever kind and character, under the seal of the municipality, when necessary or required; and (d) act for the municipality as directed by the council, in any manner and for any purpose which by any statute or law, because of its particular wording or meaning, provides for individual action of the mayor rather than body action of the council, wherein and whereby such right of action could not be properly or consistently exercised by the latter, all to the end that any such municipality coming under the provisions of this chapter shall not be denied any of the rights and privileges which any such municipality would enjoy except for the provisions of this chapter. The council shall fix the amount of compensation of the mayor and vice-mayor, for their additional duties as such, which compensation shall be in addition to their compensation as councilmen.

SOURCES: Codes, 1942, § 3825.7-05; Laws, 1948, ch. 382, § 5.

Cross References — Function of mayor under various other forms of government, see §§ 21-3-15 (code charter); 21-5-7 (commission); 21-8-15 through 21-8-19 (mayor-council); and 21-9-37 (council-manager).

Other specific powers and duties of the mayor, see §§ 21-15-7 through 21-15-15.

Reciprocal law enforcement between municipalities during civil emergencies, see §§ 21-21-31 et seq.

Duty of mayor to notify governor whenever local resources inadequate to cope with emergencies, see § 33-7-301.

Emergency powers under civil defense law, see §§ 33-15-1 et seq.

Appointment of extra deputies and police officers, see § 45-5-9.

§ 21-7-15. Election of vice-mayor and other officers; duties.

The members of the council shall from their membership elect a vice-mayor who shall have the powers and duties as prescribed by this chapter. The members of the council by a majority vote of its entire membership shall elect from time to time, to serve during its pleasure, persons, residents of said municipality, but not from among its membership, who shall be designated and have official status as (a) clerk, (b) one or more deputy clerks, (c) marshal, (d) street commissioner, (e) tax collector, (f) tax assessor, (g) treasurer, (h) police justice pro tempore, and (i) city attorney. The office of marshal, police justice pro tempore, and city attorney shall not be consolidated with any other office but such other designated offices may be consolidated in whole or in part. Such officials so elected shall be amenable to the council and their compensation shall be fixed by said council and each may be required to enter into such bond for the faithful discharge of their duties as the council deems necessary. Such selected officials may be removed by the council at any time for cause after first having been given an opportunity for a hearing on the reasons for removal. The duties of the clerk shall be those prescribed by Sections 21-15-17, 21-15-19, 21-23-11, and 21-39-7. The duties of the deputy clerk, or clerks, shall be those vested in the clerk, as aforesaid, but who shall act in the name of the clerk. The duties of the marshal shall be those as prescribed by Section 21-21-1. The duties of the street commissioner shall be those as prescribed by Section 21-3-23. The duties of the tax collector shall be those as prescribed by Section 21-33-53. The duties of the tax assessor shall be those applicable to such office under this title. The duties of the treasurer shall be those as prescribed by Section 21-39-19. In addition to the foregoing duties the council may confer upon such appointed officials respectively, other than to the police justice pro tempore, additional duties as the council may prescribe.

The police justice shall be nominated and elected at large and he, together with the police justice pro tempore as appointed, shall meet the qualifications as prescribed by Chapter 23 of this title, and shall perform such duties and have such powers as vested by this title.

SOURCES: Codes, 1942, § 3825.7-06; Laws, 1948, ch. 382, § 6.

Editor's Note — Section 21-23-1 provides that wherever the words "police justice" appear in the laws of this state they shall mean municipal judge.

Cross References — Powers of the council under various other forms of government, see §§ 21-3-15 (code charter); 21-5-9 (commission); 21-8-13 (mayor-council); and 21-9-35 (council-manager).

Duties of street commissioner under code charter form of government, see § 21-3-23.

Other duties of municipal clerk, see §§ 21-15-21 (auditor); 21-33-27, 21-33-41 (regarding property assessment rolls); 21-33-47, 21-33-67 (concerning municipal taxes); 21-35-11, 21-35-13 (keeping and reporting accounts); 21-39-5, 21-39-13 (regarding claims); 21-39-19 (ex officio treasurer); 21-41-13, 21-41-21 (concerning special assessments).

Oath, tenure, compensation and bonding of deputy clerks, see § 21-15-23.

Appointment and compensation of municipal attorney generally, see § 21-15-25.

Compensation of building inspector, see § 21-15-31.

Surety bond required for certain appointed municipal officers, see § 21-15-38.

Duties, in part, of municipal assessor, see § 21-33-9 to § 21-33-23, inclusive.

Duty of tax assessor to notify state railroad assessors of certain property escaping assessment and taxation, see § 21-33-55.

Duties of tax assessor, see §§ 27-1-1 et seq.

RESEARCH REFERENCES

ALR. Validity, construction, and application of regulation regarding outside employment of governmental employees or officers. 94 A.L.R.3d 1230.

§ 21-7-17. Existing law, rights and liabilities of city unaffected by reorganization.

All by-laws, ordinances, and resolutions lawfully passed and in force in every city heretofore operating under code charter, which changes its form of government to council form under the provisions of this chapter, shall remain in force until altered or repealed by the council elected under the provisions thereof. The territorial limits of every such city shall not be affected by the change, and all rights and property of every description, which were vested in every such city, under its former organization, shall vest in the same under the organization contemplated by council form of government, and no right or liability, either in favor or against such city, and no suit or prosecution of any kind shall be affected by such change, unless otherwise provided.

SOURCES: Codes, 1942, § 3825.7-09; Laws, 1948, ch. 382, § 9.

Cross References — For comparable provisions under various other forms of government, see §§ 21-5-19 (commission); 21-8-33 and 21-8-35 (mayor-council); and 21-9-75 and 21-9-77 (council-manager).

§ 21-7-19. Chapter cumulative to other laws.

It is not intended by this chapter to amend or repeal any existing laws by the provisions hereof, but this chapter shall be cumulative and in addition to any laws in force.

SOURCES: Codes, 1942, § 3825.7-10; Laws, 1948, ch. 382, § 10.

CHAPTER 8

Mayor-Council Form of Government

Sec.
21-8-1. Adoption of mayor-council form authorized.
21-8-3. Initiation of proceedings for adoption.
21-8-5. Conduct of election; certification of results.
21-8-7. Election of mayor and council members; reapportionment; vacancies; offices; clerical assistance and expenses.
21-8-9. Council to exercise legislative power.
21-8-11. Council officers; meetings; quorum; voting; council members shall not serve as members of commissions or boards under their control.
21-8-13. General powers and duties of council.
21-8-15. Mayor to exercise executive power.
21-8-17. General powers and duties of mayor; approval of ordinances.
21-8-19. Acting mayor; filling of vacancy in office of mayor.
21-8-21. Mayor and councilmen to be qualified electors of city; compensation; overtime to members of police and fire departments.
21-8-23. Municipal departments; surety bond.
21-8-25. Chief administrative officer.
21-8-27. Control of mayor and his subordinates by council.
21-8-29. Repealed.
21-8-31. Election offenses.
21-8-33. Existing laws unaffected by reorganization; application of civil service laws.
21-8-35. Rights and liabilities of municipality unaffected by reorganization; police court and public schools unaffected by reorganization.
21-8-37. Corporate name.
21-8-39. Provisions as to disability and relief fund for firemen and policemen to continue unaffected.
21-8-41. Applicability of general municipal law.
21-8-43. Inconsistent statutes repealed.
21-8-45. Election of officers; taking of office.
21-8-47. "Ordinance" defined for purposes of chapter.

§ 21-8-1. Adoption of mayor-council form authorized.

Any municipality, regardless of the form of government under which it is operating, may adopt the mayor-council form of government, as hereinafter provided, by the procedure hereinafter set forth.

SOURCES: Laws, 1973, ch. 328, § 1; Laws, 1976, ch. 355, § 1, eff from and after August 23, 1976 (the date the United States Attorney General interposed no objection to this amendment).

Cross References — Classification of municipalities, see § 21-1-1.

Designation of municipalities, see § 21-1-9.

Various other forms of municipal government, see §§ 21-3-1 et seq. (code charter); 21-5-1 et seq. (commission); 21-7-1 et seq. (council); and 21-9-1 et seq. (council-manager).

ATTORNEY GENERAL OPINIONS

The governing authorities of a City may change the form of government to a mayor council form of government by amending the special charter in accordance with Section 21-17-9 and create a mayor council municipality similar to the mayor council form of government set forth in Section 21-8-1 et seq. Hutcherson, October 11, 1996, A.G. Op. #96-0651.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 141 et seq., 180 et seq.

CJS. 62 C.J.S., Municipal Corporations § 268 et seq.

§ 21-8-3. Initiation of proceedings for adoption.

The manner of effecting the change in the government of any such municipality from the form of government under which it is operating to the mayor-council form of government shall be as follows:

One (1) or more petitions, similar in form and substance, addressed to the mayor, praying that an election be held to determine whether or not such city shall abandon its existing form of government and become organized under the mayor-council form of government, signed by at least ten percent (10%) of the qualified electors of such municipality, provided, however, that any municipality with population of less than forty thousand (40,000) shall be required to be signed by twenty percent (20%), shall be filed with the municipal clerk who shall, within ten (10) days thereafter, check the signatures thereto with the registration books of the municipality and attach thereto his certificate showing the total number of qualified electors in said municipality and the total number of signatures to said petitions and deliver the same to the mayor. Such petition or petitions shall specify the number of councilmen to be on the council and the number of councilmen to be elected from wards and the number at large, if any.

If on the delivery of such petition to the mayor it shall appear that such petition or petitions have not been signed by the required number of qualified electors of such municipality the mayor shall at once certify such fact and immediately return such petition or petitions to the person or persons presenting the same, who may thereafter procure additional signers thereto and again file such petition or petitions with the municipality clerk, as above provided, as an original petition.

If it shall at any time appear from the certificate of the municipality clerk that said petition or petitions have been signed by the required number of qualified electors of said municipality, the mayor shall immediately refer the same to the municipality council or board and, if it shall appear that said petition or petitions are in proper form and have been sufficiently signed by the qualified electors of such municipality, the council or board shall within ten (10) days order and provide for the holding of a special election in such municipality not less than twenty (20) days nor more than sixty (60) days from the date of making such order, notice of which shall be given, and the same shall be held and conducted as other elections in such municipality. At such special election the propositions to be voted for shall be: (a) "For the present form of government" and (b) "For the mayor-council form of government."

No petition requesting that an election be held pursuant to the provisions of this chapter shall be presented to the municipality clerk within two (2) years after the date of the last election held pursuant to provisions of this chapter, provided that there is no waiting period for the presentation of a petition for a form of government other than the mayor-council form except that it shall not be presented to the municipality clerk until after the date of an election held pursuant to a previously filed petition.

SOURCES: Laws, 1973, ch. 328, § 2; Laws, 1976, ch. 355, § 2, eff from and after August 23, 1976 (the date the United States Attorney General interposed no objection to this amendment).

Cross References — For comparable provisions under various other forms of government, see §§ 21-3-1 (code charter); 21-5-1 (commission); 21-7-5 (council); 21-9-3, 21-9-5, and 21-9-9 (council-manager).

JUDICIAL DECISIONS

1. In general.

There is no basis for a constitutional challenge to a referendum which does not question procedures set forth in §§ 21-8-1 and 21-8-3 but merely alleges that the majority of voters was racially motivated. Kirksey v. City of Jackson, 506 F. Supp. 491 (S.D. Miss. 1981), aff'd, 663 F.2d 659 (5th Cir. 1981), decision clarified on denial of reh'g, 669 F.2d 316 (5th Cir. 1982).

ATTORNEY GENERAL OPINIONS

In order for the City of Tupelo to change from a seven ward, two at-large system to a seven ward, no at-large system, an election must be held in accordance with this section. Mitchell, May 14, 2004, A.G. Op. 04-0205.

RESEARCH REFERENCES

Am Jur. 18A Am. Jur. Pl & Pr Forms (Rev), Notice, Form 1 (notice, general form).

18A Am. Jur. Pl & Pr Forms (Rev), Notice, Forms 24, 25 (affidavit of notice by posting or publication).

§ 21-8-5. Conduct of election; certification of results.

(1) All elections held for the adoption of the mayor-council form of government shall be held and conducted in accordance with the general laws for the holding of municipal elections.

(2) As soon as the returns of any election held hereunder for the adoption of the mayor-council form have been certified, and if a majority of the votes cast at such election were in favor of the mayor-council form of government, the mayor of such municipality shall immediately certify to the secretary of state that such municipality, by special election, has adopted the mayor-council form

of government provided for herein, which certificate shall be recorded in a book kept for that purpose by the secretary of state.

SOURCES: Laws, 1973, ch. 328, § 3; Laws, 1976, ch. 355, § 3, eff from and after August 23, 1976 (the date the United States Attorney General interposed no objection to this amendment).

§ 21-8-7. Election of mayor and council members; reapportionment; vacancies; offices; clerical assistance and expenses.

(1) Each municipality operating under the mayor-council form of government shall be governed by an elected council and an elected mayor. Other officers and employees shall be duly appointed pursuant to this chapter, general law or ordinance.

(2) Except as otherwise provided in subsection (4) of this section, the mayor and council members shall be elected by the voters of the municipality at a regular municipal election held on the first Tuesday after the first Monday in June as provided in Section 21-11-7, and shall serve for a term of four (4) years beginning on the first day of July next following the election that is not on a weekend.

(3) The terms of the initial mayor and council members shall commence at the expiration of the terms of office of the elected officials of the municipality serving at the time of adoption of the mayor-council form.

(4)(a) The council shall consist of five (5), seven (7) or nine (9) members. In the event there are five (5) council members, the municipality shall be divided into either five (5) or four (4) wards. In the event there are seven (7) council members, the municipality shall be divided into either seven (7), six (6) or five (5) wards. In the event there are nine (9) council members, the municipality shall be divided into seven (7) or nine (9) wards. If the municipality is divided into fewer wards than it has council members, the other council member or members shall be elected from the municipality at large. The total number of council members and the number of council members elected from wards shall be established by the petition or petitions presented pursuant to Section 21-8-3. One (1) council member shall be elected from each ward by the voters of that ward. Council members elected to represent wards must be residents of their wards at the time of qualification for election, and any council member who removes the member's residence from the municipality or from the ward from which elected shall vacate that office. However, any candidate for council member who is properly qualified as a candidate under applicable law shall be deemed to be qualified as a candidate in whatever ward the member resides if the ward has changed after the council has redistricted the municipality as provided in paragraph (c)(ii) of this subsection (4), and if the wards have been so changed, any person may qualify as a candidate for council member, using the person's existing residence or by changing the person's residence, not less than fifteen (15) days before the first party primary or special party primary, as the case may be, notwithstanding any other residency or qualification requirements to the contrary.

(b) The council or board existing at the time of the adoption of the mayor-council form of government shall designate the geographical boundaries of the wards within one hundred twenty (120) days after the election in which the mayor-council form of government is selected. In designating the geographical boundaries of the wards, each ward shall contain, as nearly as possible, the population factor obtained by dividing the municipality's population as shown by the most recent decennial census by the number of wards into which the municipality is to be divided.

(c)(i) It shall be the mandatory duty of the council to redistrict the municipality by ordinance, which ordinance may not be vetoed by the mayor, within six (6) months after the official publication by the United States of the population of the municipality as enumerated in each decennial census, and within six (6) months after the effective date of any expansion of municipal boundaries; however, if the publication of the most recent decennial census or effective date of an expansion of the municipal boundaries occurs six (6) months or more before the first party primary of a general municipal election, then the council shall redistrict the municipality by ordinance not less than sixty (60) days before the first party primary.

(ii) If the publication of the most recent decennial census occurs less than six (6) months before the first primary of a general municipal election, the election shall be held with regard to the existing defined wards; reapportioned wards based on the census shall not serve as the basis for representation until the next regularly scheduled election in which council members shall be elected.

(d) If annexation of additional territory into the municipal corporate limits of the municipality occurs less than six (6) months before the first party primary of a general municipal election, the council shall, by ordinance adopted within three (3) days of the effective date of the annexation, assign the annexed territory to an adjacent ward or wards so as to maintain as nearly as possible substantial equality of population between wards; any subsequent redistricting of the municipality by ordinance as required by this chapter shall not serve as the basis for representation until the next regularly scheduled election for municipal council members.

(5) Vacancies occurring in the council shall be filled as provided in Section 23-15-857.

(6) The mayor shall maintain an office at the city hall. The council members shall not maintain individual offices at the city hall; however, in a municipality having a population of one hundred thousand (100,000) and above according to the latest federal decennial census, council members may have individual offices in the city hall. Clerical work of council members in the performance of the duties of their office shall be performed by municipal employees or at municipal expense, and council members shall be reimbursed for the reasonable expenses incurred in the performance of the duties of their office.

SOURCES: Laws, 1973, ch. 328, § 4; Laws, 1974, ch. 336 § 1; Laws, 1976, ch. 355, § 4; Laws, 1977, ch. 310; Laws, 1980, ch. 373; Laws, 1987, ch. 509, § 1; Laws, 1990, ch. 304, § 1; Laws, 1994, ch. 358, § 1; Laws, 2001, ch. 302, § 1; Laws, 2010, ch. 319, § 2; Laws, 2011, ch. 496, § 1, eff from and after passage (approved Apr. 6, 2011.)

Editor's Note — Sections 21-11-5 and 21-11-7, referred to in this section, were repealed by Laws of 1986, ch. 495, § 329, eff from and after January 1, 1987. For comparable provisions see §§ 23-15-171 and 23-15-173.

The United States Attorney General, by letter dated July 1, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 358, § 1.

Laws of 2001, ch. 302, § 1, amended this section to conform redistricting provisions for the Mayor-Council form of government to the Council-Manager form of government.

The United States Attorney General, by letter dated April 9, 2001, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2001, ch. 360, § 2.

By letter dated July 22, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 319, § 2.

Cross References — For comparable provisions under various other forms of government, see §§ 21-3-7 (code charter); 21-5-3, 21-5-5 (commission); 21-7-7 (council); and 21-9-15 through 21-9-19 (council-manager).

Municipal elections generally, see §§ 23-15-13, 23-15-35, 23-15-171, 23-15-173, 23-15-559, 23-15-857 and 23-15-859.

JUDICIAL DECISIONS

1. In general.
2. Residency.

1. In general.

There is no basis for a constitutional challenge to a referendum which does not question procedures set forth in §§ 21-8-1 and 21-8-3 but merely alleges that the majority of voters was racially motivated. Kirksey v. City of Jackson, 506 F. Supp. 491 (S.D. Miss. 1981), aff'd, 663 F.2d 659 (5th Cir. 1981), decision clarified on denial of reh'g, 669 F.2d 316 (5th Cir. 1982).

2. Residency.

Circuit court properly set aside the results of a primary election because the nominee was disqualified where she did not maintain a residence in the ward. Glenn v. Powell, — So. 3d —, 2014 Miss. LEXIS 516 (Miss. Oct. 23, 2014).

ATTORNEY GENERAL OPINIONS

Since annexation would be effective less than six months prior to first primary of 1993 general municipal election, provisions of Miss. Code Section 21-8-7(4)(d) are controlling; under this section, where annexation occurs within such time frame, redistricting required by Miss. Code Section 21-8-7(4)(c)(i) would not become effective for election purposes until 1997 municipal election; in such situations, Miss Code § 21-8-7(4)(d) requires that governing authorities merely assign annexed areas to adjacent ward or wards for purposes of upcoming municipal elections; phrase "any subsequent redistricting of the municipality by ordinance as required by this chapter shall not serve as the basis for representation until the next regularly scheduled election for municipal councilmen" within Miss. Code Section 21-8-7(4)(d) pertains to subsequent redistricting required by Miss. Code Section 21-8-7(4)(c)(i), and not to assignment of annexed area and voters of annexed area to adjacent wards. Hewes, Mar. 5, 1993, A.G. Op. #92-0969.

Miss. Code Section 21-8-7(4)(a) is part of specific statute that is applicable only to mayor-council form of municipal government and has no general application. Cummings, Apr. 21, 1993, A.G. Op. #93-0199.

Miss. Code Section 21-8-7(4) allows candidate to use existing residence or change residence not less than fifteen days prior to first primary and to become candidate in any ward which allows incumbent council member to move out of geographical area from which incumbent was previously elected following redistricting, without vacating office. Cummings, Apr. 21, 1993, A.G. Op. #93-0199.

Miss. Code Section 21-8-7 (4)(a) specifically allows any person to qualify as candidate for city council in any ward contingent upon said person moving into appropriate ward not less than fifteen days from day of first primary; if such person does not make legitimate move establishing legal domicile in such ward by statutory deadline, candidate would not be qualified to be party's nominee or receive any votes, even though candidate's name may appear on primary ballot; any votes cast for said candidate would be void. Cummings, Apr. 21, 1993, A.G. Op. #93-0199.

Since the special charter creating the city of McComb is silent on the question of districting newly annexed territory for municipal elections, general statutory law governs; Subsection 4(d) apportions territory annexed within six months before an election. Myers, March 20, 1998, A.G. Op. #98-0162.

Councilmen of a municipality are public officers in the legislative department of government. Evans, May 7, 1999, A.G. Op. #99-0507.

Notwithstanding that compliance with the statute appeared to be impossible, a municipality could not disregard the statute for the general election scheduled in June 2001 and hold the 2001 municipal elections for members of the council from the current ward using the existing timetable and deadlines for qualifying, primary, and general elections. Bowman, Oct. 6, 2000, A.G. Op. #2000-0598.

RESEARCH REFERENCES

ALR. Payment of attorneys' services in defending action brought against officials individually as within power or obligation of public body. 47 A.L.R.5th 553.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties and Other Political Subdivisions §§ 151-153.

CJS. 62 C.J.S., Municipal Corporations §§ 273-280.

§ 21-8-9. Council to exercise legislative power.

The legislative power of the municipality shall be exercised by the municipal council, except as may be otherwise provided by general law.

SOURCES: Laws, 1973, ch. 328, § 5, eff from and after January 1, 1974.

Cross References — Legislative power vested in council under council-manager plan of government, see § 21-9-15.

Appointment, removal, qualifications, and term of office of civil service commissioners, see §§ 21-31-5 and 21-31-53.

ATTORNEY GENERAL OPINIONS

Mere budget resolution does not authorize Mayor to raise employee salaries or, in fact, to expend any municipal funds, without more explicit authorization from

Council; governing authority of municipality under Mayor-Council form of government, at least with regards to establishing budget and authorizing expenditure of municipal funds, is City Council. McNeil, Feb. 8, 1990, A.G. Op. #90-0068.

City Council in Mayor-Council form of government is not required to include in budget funding for position of public defender in new budget year regardless of whether municipality currently employs public defender. Crowe, August 5, 1993, A.G. Op. #93-0516.

Council in mayor/council municipality did not have authority to direct mayor to allocate $100,000 to unspecified streets and capital projects in each ward or to direct mayor to allocate $200,000 for improvements to city buildings and recreational facilities; council could revise budget to increase appropriations for specific projects but council must make appropriations and cannot delegate that authority to mayor because power to appropriate funds through budget is fundamental legislative power. Cochran, March 9, 1994, A.G. Op. #94-0048.

§ 21-8-11. Council officers; meetings; quorum; voting; council members shall not serve as members of commissions or boards under their control.

(1) During the first council meeting of a new council, the council shall elect one (1) member as president of the council and one (1) of its other members as vice president, both of whom shall serve at the pleasure of the council. The president shall preside at all council meetings. In the event of the president's absence or disability, the vice president shall act as president. In the event of the absence of the president and vice president, a presiding officer shall be designated by majority vote of the council to serve during such meeting. All councilmen, including the president, shall have the right to vote in the council at all times, even when serving as acting mayor.

(2) Regular public meetings of the council shall be held on the first Tuesday after the first day of July after the election of the members of the council that is not on a weekend and at least monthly thereafter on the first Tuesday after the first Monday in each month, or at such other times as the council by order may set. Special meetings may be called at any time by the mayor or a majority of the members of the council. At any and all meetings of the council, a majority of the members thereof shall constitute a quorum and the affirmative vote of a majority of the quorum at any meeting shall be necessary to adopt any motion, resolution or ordinance, or to pass any measure whatever unless otherwise provided in this chapter. The quorum required by this section may be established by teleconference or video means as provided in Section 25-41-5(2)(b). Upon every vote taken by the council, the yeas and nays shall be recorded and every motion, resolution or ordinance shall be reduced to writing before the vote is taken thereon. Upon request of one or more council members, any motion, resolution or ordinance shall be read by the clerk before the vote is taken thereon.

(3) No councilman shall be a member of any commission or board appointed or designated herein, or serve as a member of any commission or board under their jurisdiction except as otherwise provided by law.

SOURCES: Laws, 1973, ch. 328, § 6; Laws, 1976, ch. 355, § 5; Laws, 1987, ch. 503, § 3; Laws, 2010, ch. 319, § 5; Laws, 2012, ch. 442, § 5, eff September 20, 2012 (the date the United States Attorney General determined that the amendment of this section was not subject to Section 5 of the Voting Rights Act of 1965)

Editor's Note — By letter dated July 22, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 319, § 5.

By letter dated September 20, 2012, the United States Attorney General determined that the amendments to this section by Chapter 442, Laws of 2012, were not subject to preclearance under Section 5 of the Voting Rights Act of 1965, as amended and extended.

Cross References — Moving municipality's site of government in emergency resulting from enemy attack, see §§ 17-7-1 et seq.

For comparable provisions under various other forms of government, see §§ 21-3-19 (code charter); 21-5-13 (commission); 21-7-9 (council); and 21-9-39 (council-manager).

Appointment, removal, qualifications, and term of office of civil service commissioners, see §§ 21-31-5 and 21-31-53.

Advisory park and recreation commission for certain mayor-council municipalities, see § 21-37-33.

Requirement of open and public meetings, see §§ 25-41-1 et seq.

JUDICIAL DECISIONS

1. In general.

City council members did not have the authority to pursue an appeal from an order of the circuit court which limited the appointment powers of the council and held certain actions taken by the council to be void, and the council members were without standing to maintain the appeal on behalf of the council, where the council did not authorize the appeal by the council members in their official capacity and the record showed that the council was affirmatively against any such action. Gaddy v. Bucklew, 580 So. 2d 1180 (Miss. 1990).

ATTORNEY GENERAL OPINIONS

Motions pertaining to procedural actions governing the conduct of a city council's meeting are not required to be in writing. Scott, June 17, 1992, A.G. Op. #92-0415.

In the continuing absence of an elected council president, the vice-president is the "acting president" of the council. Evans, May 7, 1999, A.G. Op. #99-0507.

Whether an election will be held to fill the position of president a city council vacated because he was called to active duty in the Mississippi National Guard is a matter which must be determined by the council. The council may choose to do nothing, and thereby allow the vice-president to continue to serve as "acting president." Alternatively, the council may choose to elect a new president by majority vote. Neville, Dec. 30, 2003, A.G. Op. 03-0702.

The notice requirements of this section are not binding upon a city is governed by a special charter, and failure to comply with the provisions of this section has no affect on the conduct of a special meeting in the city or the validity of any actions taken at such a meeting. This is assuming the governing authorities of the city have not adopted the special meeting notice requirements contained in this section by official policy. Stovall, Mar. 12, 2004, A.G. Op. 0069.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties and Other Political Subdivisions §§ 156 et seq.

CJS. 62 C.J.S., Municipal Corporations §§ 284, 296 et seq., 308-312 et seq.

§ 21-8-13. General powers and duties of council.

(1) The council shall appoint a clerk of the council and deputy clerks, as necessary, who shall compile the minutes and records of its proceedings, its ordinances and resolutions as this chapter requires, and perform such duties as may be required by law.

(2) At the end of each fiscal year, the council shall cause a full and complete examination of all the books, accounts and vouchers of the municipality to be made by a competent, independent accountant or accountants who shall be appointed by the council, and the report of said examination shall be typed or printed in pamphlet form. The council shall make available a copy of said pamphlet to all persons who shall apply therefor at the office of the municipal clerk and shall cause three (3) of the printed copies of said pamphlet for each fiscal year to be substantially bound in three (3) volumes which shall be kept and preserved as a record of the clerk's office. Said pamphlets shall be published as now provided by law.

(3) If, at the beginning of the first term of office of the first city council elected by any municipality under the provisions of this chapter, the appropriations for the expenditures for the municipal government for the current fiscal year shall have been made, the council shall have power by ordinance, to revise, repeal or change said appropriations and to make additional appropriations.

(4) The authority of the council is otherwise legislative and is executed by a vote within a legally called meeting. No member of the council shall give orders to any employee or subordinate of a municipality other than the council member's personal staff. The council shall deal with the municipal departments and personnel solely through the mayor.

SOURCES: Laws, 1973, ch. 328, § 7; Laws, 1976, ch. 355, § 6; Laws, 1987, ch. 509, § 2; Laws, 1991, ch. 394, § 1; Laws, 1991, ch. 552, § 1; Laws, 2006, ch. 333, § 2, eff from and after July 1, 2006.

Cross References — For comparable provisions under various other forms of government, see §§ 21-3-15 (code charter); 21-5-9 (commission); 21-7-11 through 21-7-15 (council); and 21-9-31, 21-9-35 and 21-9-53 (council-manager).

Limits of the definition of "ordinance" with respect to council's investigative function under this section, see § 21-8-47.

General powers of governing authorities, see § 21-17-5.

Appointment, removal, qualifications, and term of office of civil service commissioners, see §§ 21-31-5 and 21-31-53.

Advisory park and recreation commission for certain mayor-council municipalities, see § 21-37-33.

ATTORNEY GENERAL OPINIONS

Under Miss. Code Section 21-8-13(4), city council may require any municipal officer, which would include city clerk, to investigate conduct of any department, office or agency of municipal government. Hewes, Apr. 7, 1993, A.G. Op. #93-0131.

Employment of internal auditor does not meet Miss. Code Section 21-8-13(2) requirement for examination of books, accounts and vouchers by independent accountant. Hewes, Apr. 7, 1993, A.G. Op. #93-0131.

Council in mayor/council municipality did not have authority to direct mayor to allocate $100,000 to unspecified streets and capital projects in each ward or to direct mayor to allocate $200,000 for improvements to city buildings and recreational facilities; council could revise budget to increase appropriations for specific projects but council must make appropriations and cannot delegate that authority to mayor. Cochran, March 9, 1994, A.G. Op. #94-0048.

There is no authority for the city council to appoint or employ a council attorney or attorneys to advise or render legal assistance to the city council. Stokes, March 5, 1999, A.G. Op. #99-0063.

A city council has no "investigative powers" over a public school district and is without authority to hire an outside auditor to investigate the district. Campbell, Sept. 16, 2005, A.G. Op. 05-0468.

Reading Sections 21-8-13(4) and 21-8-27 in pari materia, individual city council members can legally request information and advice from any municipal employee, and if such employee refuses to voluntarily supply the requested information, the council as a whole can compel a response. Crisler, Mar. 24, 2006, A.G. Op. 06-0073.

There is no conflict between Sections 21-8-13 and 21-8-27 since the two statutes address different types of communications by the city council with municipal employees. Magee, June 30, 2006, A.G. Op. 06-0274.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties and Other Political Subdivisions §§ 154-156.

CJS. 62 C.J.S., Municipal Corporations §§ 150-154.

§ 21-8-15. Mayor to exercise executive power.

The executive power of the municipality shall be exercised by the mayor, and the mayor shall have the superintending control of all the officers and affairs of the municipality, and shall take care that the laws and ordinances are executed.

SOURCES: Laws, 1973, ch. 328, § 8; Laws, 2006, ch. 333, § 3, eff from and after July 1, 2006.

Cross References — For comparable provisions under various other forms of government, see §§ 21-3-15 (code charter) and 21-5-7 (commission).

Appointment, removal, qualifications, and term of office of civil service commissioners, see §§ 21-31-5 and 21-31-53.

JUDICIAL DECISIONS

1. In general.

Ordinances requiring city council approval for mayor's appointment of city attorney, municipal judges, and prosecutors are consistent with statutory requirement that executive authority be vested with mayor in mayor-council form of government. Jordan v. Smith, 669 So. 2d 752 (Miss. 1996).

"Claims docket" method of handling municipal expenditures-appropriate department must bring properly docketed claim, before council for approval-is statutorily required although facially incompatible with statutory mayor-council form of government. Jordan v. Smith, 669 So. 2d 752 (Miss. 1996).

ATTORNEY GENERAL OPINIONS

In certain circumstances, such as a vacancy, the mayor may designate an individual to perform the core duties of department director on a temporary basis to ensure that the functions of that department are maintained in the interest of the health and welfare of the citizens; however, as there is no distinction in the statutes between temporary and permanent directors, all appointments to the position of department director whether interim or permanent must receive council approval pursuant to Section 21-8-23(2). Doty, Feb. 4, 2000, A.G. Op. #2000-0014.

A town that collects it own garbage fees is advised to provide any persons delinquent in payment of fees procedural due process, including notice and an opportunity for a hearing, prior to submitting their names to the county tax collector. Childers, Mar. 24, 2006, A.G. Op. 06-0038.

Nothing in state law would prohibit a mayor from initiating or proposing the formation of an advisory body to advise the mayor in post-Hurricane Katrina rebuilding efforts. Fitzpatrick, Mar. 24, 2006, A.G. Op. 06-0032.

§ 21-8-17. General powers and duties of mayor; approval of ordinances.

(1) The mayor shall enforce the charter and ordinances of the municipality and all general laws applicable thereto. He shall annually report to the council and the public on the work of the previous year and on the condition and requirements of the municipal government and shall, from time to time, make such recommendations for action by the council as he may deem in the public interest. He shall supervise all of the departments of the municipal government and shall require each department to make an annual report and such other reports of its work as he may deem desirable. No member of the council shall give orders to any employee or subordinate of a municipality other than the council member's personal staff.

(2) Ordinances adopted by the council shall be submitted to the mayor and he shall, within ten (10) days (not including Saturdays, Sundays or holidays) after receiving any ordinance, either approve the ordinance by affixing his signature thereto or return it to the council by delivering it to the clerk of the council together with a statement setting forth his objections thereto or to any item or part thereof. No ordinance or any item or part thereof shall take effect without the mayor's approval, unless the mayor fails to return an ordinance to the council prior to the next council meeting, but no later than

fifteen (15) days (not including Saturdays, Sundays or holidays) after it has been presented to him or unless the council upon reconsideration thereof not later than the tenth day (not including Saturdays, Sundays or holidays) following its return by the mayor, shall, by a vote of two-thirds (2/3) of the members present and voting resolve to override the mayor's veto.

(3) The mayor may attend meetings of the council and may take part in discussions of the council but shall have no vote except in the case of a tie on the question of filling a vacancy in the council, in which case he may cast the deciding vote.

SOURCES: Laws, 1973, ch. 328, § 9; Laws, 1976, ch. 355, § 7; Laws, 1987, ch. 509, § 3; Laws, 2006, ch. 333, § 4, eff from and after July 1, 2006.

Cross References — For comparable provisions under various other forms of government, see §§ 21-3-15 (code charter); 21-5-7 (commission); 21-7-13 (council); and 21-9-37 (council-manager).

Other specific powers and duties of the mayor, see §§ 21-15-7 through 21-15-15.

Reciprocal law enforcement between municipalities during civil emergencies, see §§ 21-21-31 et seq.

Appointment, removal, qualifications, and term of office of civil service commissioners, see §§ 21-31-5 and 21-31-53.

Advisory park and recreation commission for certain mayor-council municipalities, see § 21-37-33.

Duty of mayor to notify governor whenever local resources inadequate to cope with emergency, see § 33-7-301.

Authority to lease lands to the United States for the purpose of securing construction of air national guard armories, see § 33-11-15.

Emergency powers under civil defense law, see §§ 33-15-1 et seq.

Appointment of extra deputies and police officers, see § 45-5-9.

ATTORNEY GENERAL OPINIONS

In certain circumstances, such as a vacancy, the mayor may designate an individual to perform the core duties of department director on a temporary basis to ensure that the functions of that department are maintained in the interest of the health and welfare of the citizens; however, as there is no distinction in the statutes between temporary and permanent directors, all appointments to the position of department director whether interim or permanent must receive council approval pursuant to Section 21-8-23(2). Doty, Feb. 4, 2000, A.G. Op. #2000-0014.

In a strong mayor form of government, if the mayor refuses to enforce an ordinance or policy adopted by the council on legislative matters, the city council may seek judicial relief in a court of competent jurisdiction. Holmes-Hines, Mar. 7, 2003, A.G. Op. #03-0072.

A mayor's authority to make other recommendations to the city council, includes recommending proposed ordinances. Fitzpatrick, Mar. 24, 2006, A.G. Op. 06-0032.

Nothing in Section 21-8-17 or any other legal authority can be interpreted to grant the mayor of a mayor-council municipality the authority to ban gun shows by the issuance of an executive order or otherwise. White, June 2, 2006, A.G. Op. 06-0220.

§ 21-8-19. Acting mayor; filling of vacancy in office of mayor.

Whenever the mayor shall be prevented by absence from the municipality, disability or other cause from attending to the duties of his office, the mayor shall appoint a member of the council to assume the duties of the mayor. However, any acting mayor so appointed shall retain his right to vote in the council. Whenever the mayor shall have been unable to attend to the duties of his office for a period of sixty (60) consecutive days for any of the above stated reasons, or whenever the mayor shall be incapable of making such appointment, an acting mayor shall be appointed by the council from among its members and said acting mayor shall succeed to all the rights, powers and duties of the mayor or the then acting mayor. Such acting mayor shall serve until the mayor returns to office or until a new mayor has been elected to fill the unexpired term of the original mayor. A new mayor shall be elected at a special election to be called and held as provided by law for the holding of municipal elections; provided that the acting mayor shall complete the term of the original mayor if a general municipal election is to be held within six (6) months of the determination of the council hereinafter provided for in this section. Prior to the calling of a special election pursuant to this section, the council, by a two-thirds (2/3) vote of all members of the council, shall make a determination that the mayor is incapable of completing his term of office. In the event of the death of the mayor the council shall appoint an acting mayor as provided in this section to serve until a successor is elected. Within thirty (30) days of the mayor's death the council shall call a special election as provided in this section to elect his successor; provided that the acting mayor shall complete the term of the original mayor if a general municipal election is to be held within six (6) months of the death of the original mayor.

SOURCES: Laws, 1973, ch. 328, § 10; Laws, 1976, ch. 355, § 8; Laws, 1987, ch. 509, § 4, eff from and after July 1, 1987.

Cross References — For comparable provisions under various other forms of government, see §§ 21-3-13 (code charter); 21-5-7 (commission); 21-7-13 (council); and 21-9-37 (council-manager).

ATTORNEY GENERAL OPINIONS

Pursuant to Miss. Code Section 21-8-19, Mayor may choose Acting Mayor when Mayor will be absent from office for longer than sixty days. Schissel, Apr. 28, 1993, A.G. Op. #93-0289.

As the provisions contained in the special charter of a city are specific in nature with regard to the powers of the mayor pro tempore and the president of the council, this section is not applicable. Carouthers, Aug. 29, 2003, A.G. Op. 03-0452.

Miss. Code Ann. § 21-8-19 requires a mayor who is unable to serve due to absence, disability or other causes to appoint a member of the city council to assume the duties of the mayor. The appointee cannot be a city employee or a group of city employees, however a mayor may delegate certain powers to city employees in the ordinary course of business. When a mayor is unable to serve for sixty consecutive days, the city council is required to appoint one of its members as acting mayor and may be forced to do so by a writ of mandamus. McLemore, February 23, 2007, A.G. Op. #07-00087, 2007 Miss. AG

LEXIS 32.

§ 21-8-21. Mayor and councilmen to be qualified electors of city; compensation; overtime to members of police and fire departments.

(1) The mayor and the members of the council shall be qualified electors of the municipality. The compensation for the mayor and the members of the council shall be set by the council. After the salaries of the first mayor and first council have been determined by the council of any municipality electing to come under the provision of this chapter, such salaries shall be effective immediately. Thereafter, any increases or decreases in the salary for the mayor or councilmen may be authorized by the council at any time prior to ninety (90) days before the next general election for the selection of municipal officers. Such increases or decreases shall not become effective until the next elected mayor and council takes office.

(2) The salary of the mayor, councilmen and all employees of such municipality shall be paid at such periods as may be fixed by the council, but not less frequently than once a month; however, no salaries or wages shall be paid to any officer or employee of such municipality until after the same shall have been earned. Every officer or employee of the municipality shall receive such a salary of compensation as the council shall by ordinance provide, and the salary compensation of all employees of such municipality shall be fixed by the council from time to time, as occasion may demand.

(3) The city council shall have the power and authority to provide for and pay to any member of the police department or fire department of such municipality additional compensation for services and duties performed by any such member over and above the usual and regular number of days and hours per week or month ordinarily worked by such member. Nothing herein contained shall be construed to relieve any such member of the police department or fire department from being subject to call for duty on a twenty-four-hour basis whether or not additional compensation is paid. Provided, however, that no policeman or fireman shall perform any duties or other work during regular working hours for any person or association, group or drive, or during hours for which he is being paid for the performance of official duties as policeman or fireman.

SOURCES: Laws, 1973, ch. 328, § 11; Laws, 1976, ch. 355, § 9; Laws, 1987, ch. 509, § 5, eff from and after July 1, 1987.

Cross References — For comparable provisions under various other forms of government, see §§ 21-3-9 (code charter); 21-5-5 (commission); 21-7-7, 21-7-13 (council); and 21-9-15, 21-9-61 and 21-9-63 (council-manager).

Police departments generally, see §§ 21-21-1 et seq.

Fire departments generally, see §§ 21-25-1 et seq.

ATTORNEY GENERAL OPINIONS

Notwithstanding any provision of Comprehensive Personnel Ordinance to contrary, council must ultimately set salary and compensation levels of all municipal employees. Halat, Oct. 26, 1990, A.G. Op. #90-0137.

A police officer may work for two different municipalities, but must fulfill responsibilities of both positions and cannot be paid by both municipalities for the same hours. Scott, July 11, 1997, A.G. Op. #97-0383.

A city council has the power to set salaries and to raise or reduce the salaries of department heads and all municipal employees pursuant to subsection (2). McLemore, Jan. 25, 2002, A.G. Op. #02-0004.

Only the city council in a mayor/council form of government has the authority to issue employee pay increases. Taylor, Sept. 15, 2006, A.G. Op. 06-0437.

§ 21-8-23. Municipal departments; surety bond.

(1) The municipality may have a department of administration and such other departments as the council may establish by ordinance. All of the administrative functions, powers and duties of the municipality shall be allocated and assigned among and within such departments.

(2) Each department shall be headed by a director, who shall be appointed by the mayor and confirmed by an affirmative vote of a majority of the council present and voting at any such meeting. Each director shall serve during the term of office of the mayor appointing him, and until the appointment and qualification of his successor.

(3) The mayor may, in his discretion, remove the director of any department. Directors of departments shall be excluded from the coverage of any ordinance or general law providing for a civil service system in the municipality; provided, however, all individuals serving as heads of departments at the time of the municipality's adoption of the mayor-council form as described in this chapter shall continue to be covered by the provisions of the civil service system in effect at the time the mayor-council form is adopted.

(4) Directors of departments shall appoint subordinate officers and employees within their respective departments and may, with approval of the mayor, remove such officers and employees subject to the provisions of any ordinance establishing a civil service system where that system is effective in the municipality, or other general law; provided, however, that the council may provide by ordinance for the appointment and removal of specific boards or commissions by the mayor.

(5) Whenever the city council is authorized by any provision of general law to appoint the members of any board, authority or commission, such power of appointment shall be deemed to vest in the mayor with the confirmation of an affirmative vote of a majority of the council present and voting at any meeting.

(6) The council shall also require all officers and employees handling or having the custody of any of the public funds of such municipality to give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in an amount to be determined by the council (which shall not be less than

Fifty Thousand Dollars ($50,000.00)), the premium on which bonds shall be paid by the city.

SOURCES: Laws, 1973, ch. 328, § 12; Laws, 1976, ch. 355, § 10; Laws, 1986, ch. 458, § 25; Laws, 1987, ch. 509, § 6; Laws, 2009, ch. 467, § 8, eff from and after July 1, 2009.

Cross References — For comparable provisions under various other forms of government, see §§ 21-3-5 (code charter); 21-5-9 and 21-5-11 (commission); 21-7-11 (council); and 21-9-21 (council-manager).

Surety bond required for certain appointed municipal officers, see § 21-15-38.

JUDICIAL DECISIONS

1.-2. [Reserved for future use.]
3. Department directors.

1.-2. [Reserved for future use.]

3. Department directors.

Trial court properly granted council members' petition for a writ of mandamus directing a reelected mayor to resubmit department directors for approval to the council pursuant to Miss. Code Ann. § 21-8-23(2) where § 21-8-23(2) required that the mayor resubmit directors for approval by the council at the beginning of the new term of office, even if a director was a holdover from the previous term and had been previously approved by the council. DuPree v. Carroll, 967 So. 2d 27 (Miss. 2007).

ATTORNEY GENERAL OPINIONS

While there is no specific statutory procedure for reconsideration of matter previously voted on by city council, nothing would prohibit mayor from appointing qualified individual second time after council failed to confirm that individual following his first appointment. Jones, Feb. 21, 1990, A.G. Op. #90-0118.

Refusal of city council to confirm Mayor's appointee is not subject to Mayor's veto; to say otherwise would have effect of allowing Mayor to use his veto power to obtain confirmation without affirmative vote of majority of council as required by statute. Jones, Feb. 28, 1990, A.G. Op. #90-0156.

Statute requires city council confirmation of appointment of Acting Departmental Director whether it is expected to be temporary appointment or otherwise; such appointment which is made and confirmed would then be subject to removal in accordance to statute. Jones, March 16, 1990, A.G. Op. #90-0202.

Under Miss. Code Section 21-8-23, city council may establish municipal departments and mayor may appoint director of such departments, subject to confirmation by council; subsection (3) provides that such directors of departments shall be excluded from coverage of any civil service system; there is no requirement that Chief City Attorney be department director appointed by mayor; attorney could simply be staff member of particular department appointed by director of that department under Miss. Code Section 21-8-23(4); as such, attorney could be covered by civil service. Hewes, Mar. 29, 1993, A.G. Op. #92-0952.

When mayor of mayor-council city is re-elected to office, mayor should submit his appointments for department directors to city council for confirmation each term, even if those named are current directors. Lawrence, March 9, 1994, A.G. Op. #94-0046.

After a majority of the city council members present and voting at a meeting have confirmed an appointment to a board, authority or commission authorized by general legislation, the council members are not empowered to withdraw that confirmation. Doty, May 1, 1998, A.G. Op. #98-0228.

The city council may amend the ordinance establishing the salary for every municipal employee from time to time as, in the council's discretion, occasion may demand; further, the salary of every municipal employee must be fixed by such ordinance. Wansley, July 10, 1998, A. G. Op. #98-0283.

In certain circumstances, such as a vacancy, the mayor may designate an individual to perform the core duties of department director on a temporary basis to ensure that the functions of that department are maintained in the interest of the health and welfare of the citizens; however, as there is no distinction in the statutes between temporary and permanent directors, all appointments to the position of department director whether interim or permanent must receive council approval pursuant to Section 21-8-23(2). Doty, Feb. 4, 2000, A.G. Op. #2000-0014.

If a mayor does not fulfill his term and resigns or leaves for some other reason and a new mayor comes in to fill the unexpired term of the former mayor, the new mayor must resubmit names of the department heads to the city council for reconfirmation. Doty, Feb. 18, 2000, A.G. Op. #2000-0070.

The statute requires the mayor to present appointments to the city council for confirmation, but does not specifically state what alternatives the city council may pursue if the mayor does not present appointments to the city council for confirmation. McLemore, Jan. 25, 2002, A.G. Op. #02-0004.

As there is no distinction in the statutes between temporary and permanent directors, all appointments to the position of department director, whether interim or permanent, must receive city council approval pursuant to subsection (2). McLemore, Jan. 25, 2002, A.G. Op. #02-0004.

Seminar or conference registration fees may be paid for members of appointed boards and commissions, provided those expenses are found to be necessary for the members' board or commission responsibilities. Myers, Feb. 21, 2003, A.G. Op. #03-0078.

A city may pay travel expenses in connection with the attendance at a necessary seminar, conference or workshop. Myers, Feb. 21, 2003, A.G. Op. #03-0078.

A city may pay membership dues or fees for an appointed board or commission member to become a member of an organization which provides information, training, etc. for the board or commission on which they serve. Myers, Feb. 21, 2003, A.G. Op. #03-0078.

If the expense of a publication is found to be reasonable and necessary to the performance of an officer's duties, and the benefits thereof will inure to the benefit of the municipality with any personal benefit being incidental, the municipality may pay for subscriptions. Myers, Feb. 21, 2003, A.G. Op. #03-0078.

In a city with a Mayor-Council form of government, the Mayor does not have the discretion to approve expenditures for travel, membership dues, seminar fees or professional publications or professional publications; they must be approved by the City Council. Myers, Feb. 21, 2003, A.G. Op. #03-0078.

If the a city has a duly enacted ordinance establishing the fire department as a municipal department and the fire chief as the director of that department, then only the mayor has the authority to remove that individual from the position. Bailey, Feb. 2, 2004, A.G. Op. 04-0017.

An "acting" or interim director must meet the same qualifications and be confirmed in the same manner as a permanent director. Campbell, Oct. 17, 2005, A.G. Op. 05-0467.

The intent of Section 21-8-23 is that a mayor shall appoint department directors within a reasonable time after taking office. Carroll, Feb. 24, 2006, A.G. Op. 06-0013.

In a mayor/council form of municipal government, a mayor, including one who is re-elected to a new four-year term of office, must submit his appointees to director positions to the city council for confirmation, even if the appointees are the same individuals who served as department directors during the prior term. DuPree, Feb. 24, 2006, A.G. Op. 06-0058.

§ 21-8-25. Chief administrative officer.

The council of any municipality adopting the mayor-council form of government may, within its discretion, adopt an ordinance providing that the mayor shall appoint, with the advice and consent of the council, a chief administrative officer to coordinate and direct the operations of the various departments and functions of municipal government; such chief administrative officer shall serve at the pleasure of the mayor and shall possess such qualifications and experience as shall be set out in the aforesaid ordinance. The said chief administrative officer shall be answerable solely to the mayor in the performance of his functions and shall be subject to dismissal at the pleasure of the mayor and shall be excluded from the coverage of any ordinance or general law providing for a civil service system in the municipality.

SOURCES: Laws, 1973, ch. 328, § 13; Laws, 1976, ch. 355, § 11, eff from and after August 23, 1976 (the date the United States Attorney General interposed no objection to this amendment).

Cross References — For comparable provisions under various other forms of government, see §§ 21-3-25 (code charter); and 21-9-25 (council-manager).

Surety bond required for certain appointed municipal officers, see § 21-15-38.

ATTORNEY GENERAL OPINIONS

A municipal civil service commission would have no authority with regard to benefits to be provided to municipal employees by the governing authority. Bowman, Feb. 7, 2003, A.G. Op. #03-0771.

§ 21-8-27. Control of mayor and his subordinates by council.

The members of the council shall not direct or dictate the appointment of any person to or his removal from office by the mayor or any department directors. Except for the purposes of inquiring or receiving information or advice, the council shall deal with the municipal departments and personnel solely through the mayor and no member of the council shall give orders to any subordinate of the municipality. The council shall have the power to investigate any part of the municipal government and for that purpose to compel the attendance of witnesses and the production of documents and other evidence.

SOURCES: Laws, 1973, ch. 328, § 14; Laws, 1976, ch. 355, § 12, eff from and after August 23, 1976 (the date the United States Attorney General interposed no objection to this amendment).

Cross References — For comparable provisions under various other forms of government, see §§ 21-3-15 (code charter); and 21-9-31 (council-manager).

Definition of "ordinance" with respect to council's investigative function, see § 21-8-47.

ATTORNEY GENERAL OPINIONS

Individual council members can legally request information and advice from any municipal employee, and if such employee refuses to voluntarily supply requested information, council as whole can compel response; council as whole may decide to limit inquiry in some fashion, but no other entity of municipal government has any authority to limit or circumscribe council member's inquiry. Halat, May 18, 1990, A.G. Op. #90-0352.

A city council member in a mayor-council municipality may inquire and receive information and advice directly from department heads and employees without dealing with the mayor. Jones, Sept. 19, 2003. A.G. Op. 03-0470.

There are no deadlines for architects and engineers who provide professional services to municipalities to respond to requests for information from the governing authorities or individual council members apart from any contractual duties that exist. However, architects and engineers should comply in a timely manner with reasonable requests for information from council members or the council as a whole. Jones, Sept. 19, 2003. A.G. Op. 03-0470.

Reading Sections 21-8-13(4) and 21-8-27 in pari materia, individual city council members can legally request information and advice from any municipal employee, and if such employee refuses to voluntarily supply the requested information, the council as a whole can compel a response. Crisler, Mar. 24, 2006, A.G. Op. 06-0073.

There is no conflict between Sections 21-8-13 and 21-8-27 since the two statutes address different types of communications by the city council with municipal employees. Magee, June 30, 2006, A.G. Op. 06-0274.

§ 21-8-29. Repealed.

Repealed by Laws, 1983, ch. 469, § 10, eff from and after July 1, 1983. [En Laws, 1973, ch. 328, § 15; Laws, 1976, ch. 355, § 13]

Editor's Note — Former § 21-8-29 made it a misdemeanor for municipal officers and employees to have certain prohibited interests.

§ 21-8-31. Election offenses.

Any municipal officer or employee, other than the mayor and councilmen of any such municipality, who shall, during hours of employment solicit or attempt to influence any person to vote for any particular candidate at any election held in such municipality shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding One Hundred Dollars ($100.00) or by imprisonment in the municipal jail not exceeding thirty (30) days, or both such fine and imprisonment.

SOURCES: Laws, 1973, ch. 328, § 16; Laws, 1976, ch. 355, § 14, eff from and after August 23, 1976 (the date the United States Attorney General interposed no objection to this amendment).

Cross References — For comparable provisions under various other forms of government, see §§ 21-5-21 (commission); and 21-9-71 (council-manager).

Conservation officers prohibited from engaging in political campaigns, see § 49-1-19.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections §§ 459, 464.

CJS. 29 C.J.S., Elections §§ 540 et seq.

§ 21-8-33. Existing laws unaffected by reorganization; application of civil service laws.

All laws governing any municipality coming under the provisions of this chapter which are not inconsistent with the provisions hereof respecting the mayor-council form of government shall apply to and govern such municipalities respectively when they shall come under the mayor-council form. All orders, ordinances or resolutions heretofore adopted by a municipality adopting the mayor-council form of government shall remain in full force and effect until altered or repealed by the council established hereunder, and all of the provisions of the civil service acts applying to any municipality adopting the mayor-council form of government at the time of such adoption shall continue to apply in full force and effect to such municipality after adoption of such mayor-council form of government. The board of civil service commissioners existing and operating under the former plan of government shall continue to operate without interruption or impairment under the mayor-council form of government. All rights, privileges, and advantages of all employees coming under the civil service acts applying to said municipality at the time of adoption shall remain in full force and effect and shall in nowise be impaired, altered, or changed by such adoption, except as otherwise provided by this chapter. After the election and taking of office of the councilmen and mayor under the mayor-council form of government, all functions and duties of every nature that would have otherwise been performed by the governing body under the previous form of government in relation to such civil service acts shall thereafter be exercised and performed by the municipal council under the mayor-council form of government except that all appointments of employees coming under the provisions of such civil service acts shall be made, subject to such civil service acts, by the mayor, but all appointments made prior to the change to the mayor-council form shall remain in full force and effect.

SOURCES: Laws, 1973, ch. 328, § 17; Laws, 1976, ch. 355, § 15, eff from and after August 23, 1976 (the date the United States Attorney General interposed no objection to this amendment).

Cross References — For comparable provisions under various other forms of government, see §§ 21-5-19 (commission); 21-7-17 (council); and 21-9-75 and 21-9-77 (council-manager).

Civil service laws generally, see §§ 21-31-1 et seq.

§ 21-8-35. Rights and liabilities of municipality unaffected by reorganization; police court and public schools unaffected by reorganization.

The territorial limits of any such municipality shall remain the same as under its former organization and any litigation concerning annexation in progress at the time any municipality shall adopt the mayor-council form of government shall not be affected by such change; provided that nothing herein shall affect the rights of such municipality to expand its territorial limits as provided by law. All rights and property of every description which were vested in every such municipality under its former organization shall vest in the same under the organization contemplated by the mayor-council form of government; and no right or liability, either in favor of or against such municipality, and no suit or prosecution of any kind shall be affected by such change. This chapter shall not in any manner, irrespective of other provisions hereof, affect the organization of the police court or of the public schools which shall continue to operate by and under the laws otherwise applicable. The police justice, as well as all other municipal employees, shall be appointed by the mayor.

SOURCES: Laws, 1973, ch. 328, § 18; Laws, 1976, ch. 355, § 16, eff from and after August 23, 1976 (the date the United States Attorney General interposed no objection to this amendment).

Editor's Note — Section 21-23-1 provides that wherever the words "police court" and "police justice" appear in the laws of this state they shall mean municipal court and municipal judge, respectively.

Cross References — For comparable provisions under various other forms of government, see §§ 21-5-19 (commission); 21-7-17 (council); and 21-9-75 and 21-9-77 (council-manager).

Municipal courts generally, see §§ 21-23-1 et seq.

§ 21-8-37. Corporate name.

The corporate name of every such municipality shall be "The City, Town, Village of (name of municipality)" under which name the mayor and council shall exercise and perform all the corporate powers, duties and obligations conferred or imposed on it by the members thereof.

SOURCES: Laws, 1973, ch. 328, § 19; Laws, 1976, ch. 355, § 17, eff from and after August 23, 1976 (the date the United States Attorney General interposed no objection to this amendment).

Cross References — Corporate names in general, see § 21-1-5.

For comparable provisions under various forms of government, see §§ 21-5-3 (commission); and 21-9-35 (council-manager).

§ 21-8-39. Provisions as to disability and relief fund for firemen and policemen to continue unaffected.

All of the provisions of law pertaining to policemen and firemen under the "disability and relief fund for firemen and policemen" as provided in Sections 21-29-201 et seq., shall be unimpaired, and there shall be no interruption or change in the operation or administration of the disability and relief fund for firemen and policemen, and other municipal employees.

SOURCES: Laws, 1973, ch. 328, § 20; Laws, 1976, ch. 355, § 18, eff from and after August 23, 1976 (the date the United States Attorney General interposed no objection to this amendment).

Cross References — Creation and operation of firemen's and policemen's disability and relief funds, see §§ 21-29-101 et seq., 21-29-201 et seq.

§ 21-8-41. Applicability of general municipal law.

All of the provisions of law with reference to the government of municipalities not inconsistent with the terms and provisions of this chapter shall be applicable to any municipality operating under the mayor-council form of government as herein provided.

SOURCES: Laws, 1973, ch. 328, § 21, eff from and after January 1, 1974.

§ 21-8-43. Inconsistent statutes repealed.

In the event a municipality adopts the mayor-council form of government as hereinabove set out, all statutes in conflict with the provisions of such form of government as set out in this chapter are hereby repealed.

SOURCES: Laws, 1973, ch. 328, § 22, eff from and after January 1, 1974.

§ 21-8-45. Election of officers; taking of office.

Any municipality voting to adopt the mayor-council form of government after adoption of this chapter shall have an election of municipal officers within the time and in the manner provided by statute, and such officers and the form of government shall take effect and be instituted at the time of the taking of office for the newly elected officials as expressly provided by statute.

SOURCES: Laws, 1973, ch. 328, § 23, eff from and after January 1, 1974.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties and Other Political Subdivisions §§ 151-152.

CJS. 62 C.J.S., Municipal Corporations § 273-280.

§ 21-8-47. "Ordinance" defined for purposes of chapter.

The term "ordinance" as used in this chapter shall be deemed to include ordinances, resolutions, orders and any other official actions of the council, except those procedural actions governing the conduct of the council's meetings, appointing a clerk of council, and exercising the council's investigative functions under Section 21-8-13(4).

SOURCES: Laws, 1973, ch. 328, § 24; Laws, 1987, ch. 509, § 7, eff from and after July 1, 1987.

Cross References — Municipal ordinances generally, see §§ 21-13-1 et seq.

CHAPTER 9

Council-Manager Plan of Government

Sec.
21-9-1. Adoption of council-manager plan by certain municipalities; applicability of Title 21.
21-9-3. Initiating proceedings for adoption.
21-9-5. Results of election for change to council-manager form; effective date of change.
21-9-7. Transition to council-manager plan.
21-9-9. Procedure for repeal of council-manager plan.
21-9-11. Conduct of elections.
21-9-13. Transition from council-manager plan.
21-9-15. Municipal council; election of councilmen and mayor; terms.
21-9-17. Primary election for candidates for mayor and councilmen.
21-9-19. Conduct of municipal council election; declaring results.
21-9-21. Appointment of officials and employees of city other than councilmen and mayor; surety bond.
21-9-23. Transfer of administrative functions to city manager.
21-9-25. City manager; choosing thereof.
21-9-27. City manager; term of office; removal.
21-9-29. Duties of city manager.
21-9-31. Control of manager and his subordinates by council.
21-9-33. Attendance of manager and other officials at council meetings.
21-9-35. City council to act as governing body of city.
21-9-37. Function of the mayor.
21-9-39. Meetings of the council; quorum; voting.
21-9-41. Mayor and councilmen not required to have offices or office hours.
21-9-43. Council members shall not serve as members of commissions or boards under their control.
21-9-45. Reorganization of city government at behest of council.
21-9-47. Hours of service of city officers and employees.
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21-9-53. Annual examination and statement to be made by council.
21-9-55. Appropriations by first elected council.
21-9-57. Power of council may be limited as to tax rates or bond issuances.
21-9-59. Council may redistrict wards and voting precincts.
21-9-61. Compensation of mayor and councilmen.
21-9-63. Salaries and their payment; overtime to members of police and fire departments.
21-9-65. Petitions for special election.
21-9-67. Ordering by council of special elections.
21-9-69. Conduct of elections.
21-9-71. Election offenses.
21-9-73. Repealed.
21-9-75. Police court and public schools unaffected by reorganization.
21-9-77. Existing laws, rights and liabilities of city unaffected by reorganization.
21-9-79. Application of civil service laws.
21-9-81. Provisions as to disability and relief fund for firemen and policemen to continue unaffected.
21-9-83. General and special laws and statutes to be construed as applicable to council.

§ 21-9-1. Adoption of council-manager plan by certain municipalities; applicability of Title 21.

Any city or town as defined by law, regardless of the form of government under which it is operating, may adopt the council-manager plan of government by the procedure hereinafter set forth. Wherever the word "city" is used in this chapter, it shall be construed to refer to "city or town."

All of the provisions of this title, derived from Chapter 491, Laws of 1950, with reference to the government of municipalities, not inconsistent with the terms and provisions of this chapter, shall be applicable to any municipality operating under the council-manager plan of government as herein provided.

SOURCES: Codes, 1942, §§ 3825.5-01, 3825.5-46; Laws, 1948, ch. 385, §§ 1, 46; Laws, 1952, ch. 372, §§ 1, 21.

Cross References — Classification of municipalities, see § 21-1-1.

Designation of municipalities, see § 21-1-9.

Various other forms of municipal government, see §§ 21-3-1 et seq. (code charter); 21-5-1 et seq. (commission); 21-7-1 et seq. (council); and 21-8-1 et seq. (mayor-council).

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 141 et seq.; 180 et seq.

13C Am. Jur. Legal Forms 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 180:20 (municipal corporation charter for council-manager form of government).

18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, etc., Forms 64, 65 (allegations of capacity of plaintiff as taxpayer, and of exercise of official functions by municipal officers).

18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, etc., Forms 131 et seq. (claims, notice and presentation).

CJS. 62 C.J.S. Municipal Corporations §§ 268 et seq.

§ 21-9-3. Initiating proceedings for adoption.

The manner of effecting the change in the government of any such city from the form of government under which it is operating to the council-manager plan of government shall be as follows:

One or more petitions, similar in form and substance, addressed to the mayor, praying that an election be held to determine whether or not such city shall abandon its existing form of government and become organized under a council-manager plan of government, signed by at least ten percent (10%) of the qualified electors of such city, shall be filed with the city clerk, who shall within ten (10) days thereafter check the signatures thereto with the registration books of the city and attach thereto his certificate showing the total number of qualified electors in said city, and the total number of signatures to said petitions and deliver the same to the mayor.

If, on the delivery of such petition to the mayor, it shall appear that such petition or petitions have not been signed by the required number of qualified electors of such city, the mayor shall at once certify such fact and immediately return such petition or petitions to the person or persons presenting the same, who may thereafter procure additional signers thereto and again file such petition or petitions with the city clerk, as above provided, as an original petition.

If it shall at any time appear from the certificate of the city clerk that said petition or petitions have been signed by the required number of qualified electors of said city, the mayor shall immediately refer the same to the city council or board and if it shall appear that said petition or petitions are in proper form and have been sufficiently signed by the qualified electors of such city, the council or board shall within five (5) days order and provide for the holding of a special election in such city not less than twenty (20) days nor more than sixty (60) days from the date of making such order, notice of which shall be given, and the same shall be held and conducted as other elections in such city. At such special election the propositions to be voted for shall be: (1) "FOR THE PRESENT FORM OF GOVERNMENT" and "FOR THE COUNCIL-MANAGER PLAN OF GOVERNMENT," and (2) "FOR COUNCILMEN ELECTED AT LARGE" and "FOR COUNCILMEN ELECTED BY WARDS," which propositions shall be printed on the official ballot at such election.

SOURCES: Codes, 1942, § 3825.5-02; Laws, 1948, ch. 385, § 2; Laws, 1952, ch. 372, § 2; Laws, 1974, ch. 439, § 1, eff from and after June 25, 1974 (the date the United States Attorney General interposed no objections to this amendment).

Cross References — For comparable provisions under various forms of government, see §§ 21-3-1 (code charter); 21-5-1 (commission); 21-7-5 (council); and 21-8-3 and 21-8-5 (mayor-council).

Results of election, see § 21-9-5.

Transition to council-manager plan, § 21-9-7.

Repeal of council-manager plan, see § 21-9-9.

Conduct of elections, see § 21-9-11.

JUDICIAL DECISIONS

1. In general.

Where, following the entry of an order granting petition and directing an election on the proposition of whether to retain the present form of city government or to adopt the council-manager form, all in conformity with this section [Code 1942, § 3825.5-02], the city clerk thereafter caused a false and fictitious order to be entered on the minutes adding a second proposition to be voted on with respect to the election of councilmen, the election held under the second order was invalid and the order of the city council adopting and filing the report of the election commission and changing the form of city government was void. City of Pascagoula v. May, 254 Miss. 208, 176 So. 2d 892 (1965).

RESEARCH REFERENCES

Am Jur. 18A Am. Jur. Pl & Pr Forms (Rev), Notice, Form 1 (notice, general form).

18 Am. Jur. Pl & Pr Forms (Rev), Notice, Forms 24, 25 (affidavit of notice by posting or publication).

§ 21-9-5. Results of election for change to council-manager form; effective date of change.

As soon as the returns of any election held hereunder for the adoption of the council-manager plan have been certified, and if a majority of the votes cast at such election were in favor of the council-manager form of government, the mayor of such city shall immediately certify to the secretary of state that such city, by special election, has adopted the council-manager form of government provided for herein, which certificate shall be recorded in a book kept for that purpose by the secretary of state. Such form of government shall then become effective on the third Tuesday after said adoption.

In case it shall appear by said election returns that a majority of the votes cast at such election were in favor of the existing form of government, then the mayor and councilmen or aldermen shall dismiss the petition, in which case no similar petition or ordinance shall be filed for a period of two years from the date of such order dismissing the petition, but nothing short of such election shall preclude the filing of such petition and the holding of another election at any time.

SOURCES: Codes, 1942, §§ 3825.5-03, 3825.5-08; Laws, 1948, ch. 385, §§ 3, 8; Laws, 1952, ch. 372, §§ 3, 7; Laws, 1962, ch. 548, § 1, eff from and after passage (approved May 22, 1962).

Cross References — For comparable provisions under various forms of government, see §§ 21-3-1 (code charter); 21-5-1 (commission); 21-7-5 (council); and 21-8-3 and 21-8-5 (mayor-council).

Transition to council-manager plan, see § 21-9-7.

Conduct of elections, see § 21-9-11.

JUDICIAL DECISIONS

1. In general.

Where the entire proceedings to change to a council-manager form of government were based upon a false and fictitious order calling the election, and a false certificate to the notice of election, there was no duty and no power to adopt or approve such proceedings or to certify to the secretary of state that the council-manager form of government had been adopted. City of Pascagoula v. May, 254 Miss. 208, 176 So. 2d 892 (1965).

§ 21-9-7. Transition to council-manager plan.

All elected officials of the city holding office at the time the council-manager plan is adopted hereunder shall continue in office until the expiration of their respective terms of office. The mayor and councilmen or aldermen of the city, prior to the time of the effective date for the installation of the council-manager plan, shall have power to provide by ordinance for any details of the orderly transition from the prior form of government to the council-manager plan, not otherwise specified by law.

SOURCES: Codes, 1942, § 3825.5-04; Laws, 1948, ch. 385, § 4; Laws, 1952, ch. 372, § 4; Laws, 1962, ch. 548, § 2; Laws, 1965 Ex Sess, ch. 20, §§ 1-3.

Cross References — Results of election and effective date of change, see § 21-9-5.
Conduct of elections, see § 21-9-11.
Transition from council-manager plan, see § 21-9-13.

JUDICIAL DECISIONS

1. In general.

The purpose of this section [Code 1942, § 3825.5-04] was to provide for an orderly transition from mayor-councilman or alderman form of government to council-manager plan of government, and it was not the legislative purpose by enacting this section [Code 1942, § 3825.5-04] to legislate out of office a mayor and commissioners who had been previously elected. Krebs v. Bradley, 190 So. 2d 886 (Miss. 1966).

§ 21-9-9. Procedure for repeal of council-manager plan.

Any city which has adopted the council-manager plan, as herein provided, and which shall have operated under the council-manager plan for a period of three years, may discontinue the council-manager plan of government by a vote of the electors thereof initiated by a petition of twenty per centum of the qualified electors of said city, and the same procedure set forth in Section 21-9-3, shall be followed in determining whether such plan shall be discontinued. The propositions to be then voted on shall be: "For the council-manager form of government" and "Against the council-manager form of government."

SOURCES: Codes, 1942, § 3825.5-05; Laws, 1948, ch. 385, § 5; Laws, 1952, ch. 372, § 5.

Cross References — Judicial definitions and illustrations generally, see §§ 1-3-1 et seq.
Results of election and effective date of change, see § 21-9-5.
Conduct of elections, see § 21-9-11.
Transition from council-manager plan, see § 21-9-13.

ATTORNEY GENERAL OPINIONS

A municipality not having a shelter for animals may not take custody of animals running at large unless it makes other arrangements for impounding the animals, such as contracting with a nonprofit entity or another municipality to provide shelter services. Redmond, Aug. 26, 2005, A.G. Op. 05-0447.

§ 21-9-11. Conduct of elections.

All elections held either for the adoption of the council-manager plan of government or for its discontinuance or repeal, shall be held and conducted in accordance with the general laws for the holding of municipal elections.

SOURCES: Codes, 1942, § 3825.5-07; Laws, 1948, ch. 385, § 7.

Cross References — Results of election and effective date of change, see § 21-9-5.
Transition to council-manager plan, see § 21-9-7.
Procedure for repeal of council-manager plan, see § 21-9-9.
Transition from council-manager plan, see § 21-9-13.

Ordering special elections and conducting elections in council-manager cities, see §§ 21-9-67, 21-9-69.

Municipal elections generally, see §§ 23-15-13, 23-15-35, 23-15-171, 23-15-173, 23-15-559, 23-15-857 and 23-15-859.

§ 21-9-13. Transition from council-manager plan.

In case the council-manager plan of government is discontinued or repealed by a majority vote of the qualified electors of such city, voting in an election for that purpose, as provided in Section 21-9-9, the next municipal election thereafter shall be conducted for such officials as are provided by law for such city under and according to that form of government under which it operated prior to the time that it adopted the council-manager plan of government. The elected officials then holding office under the council-manager plan shall continue in office until their duly elected successors under said form of government under which the municipality operated prior to the adoption of the council-manager plan shall take office. On the date on which such newly elected officials shall take office, as provided by law, the employment of such manager as shall have theretofore been employed by the council under the council-manager plan shall terminate, and all offices created under the provisions of this chapter shall terminate. Thereafter the municipality shall be governed by the general law applicable according to the form of government under which it had operated prior to adoption of the council-manager plan. The council or board shall have power by ordinance not inconsistent herewith to provide for the orderly transition from the one form of government to the other, in the same manner as is provided in Section 21-9-7. A city which has adopted the council-manager plan and subsequently discontinues it, as herein provided, may readopt it by following the same procedure as that herein set forth for its original adoption, and it may likewise thereafter so discontinue the same.

SOURCES: Codes, 1942, § 3825.5-06; Laws, 1948, ch. 385, § 6; Laws, 1952, ch. 372, § 6.

Cross References — Transition to council-manager plan, see § 21-9-7.

Repeal of council-manager plan, see § 21-9-9.

Conduct of elections, see § 21-9-11.

§ 21-9-15. Municipal council; election of councilmen and mayor; terms.

(1)(a) The legislative power of any city in which the council-manager plan of government is in effect under this chapter shall be vested in a council consisting of a mayor and five (5) councilmen.

(b) Any city with a larger or smaller number of councilmen, prior to September 30, 1962, may retain this larger or smaller number of councilmen or may adopt the council size of five (5) as prescribed herein. This option shall be exercised through the enactment of an appropriate ordinance by the municipal governing body prior to the election to adopt the council-manager plan of government. In the event the council fails to exercise this option, the council shall consist of five (5) councilmen.

(c) At the next regular municipal election which takes place after the adoption of the council-manager form of government, the mayor shall be elected at large by the voters of the entire city. Also, the councilmen shall be elected at large by the voters of the entire city to represent a city-wide district, or each of four (4) councilmen may be elected from a ward to represent such ward and one (1) councilman may be elected to represent a city-wide district. This option shall be exercised by an appropriate ordinance enacted by the city governing body prior to the election to adopt the council-manager plan of government. In the event the council fails to exercise this option, the councilmen shall be elected at large to represent the city-wide district. In its discretion at any time after adoption and implementation of the council-manager plan of government the council may provide for the election of councilmen by wards as provided herein, which shall become effective at the next regularly scheduled election for city councilmen.

(d) Councilmen elected to represent wards must be residents of their wards; and in cities having more or fewer than five (5) councilmen, prior to September 30, 1962, the city governing body shall determine the number of councilmen to represent the wards and the number of councilmen to represent the city-wide district.

(e) The council of any municipality having a population exceeding forty-five thousand (45,000) inhabitants according to the 1970 decennial census which is situated in a Class 1 county bordering on the State of Alabama and which is governed by a council-manager plan of government on January 1, 1977 may, in its discretion, adopt an ordinance to require the election of four (4) of the five (5) council members from wards and not from the city at large. The four (4) council members shall be elected one (1) each from the wards in which they reside in the municipality, and shall be elected only by the registered voters residing within the ward in which the council member resides. The mayor and fifth council member may continue to be elected from the city at large. Any council member who shall remove his residence from the ward from which he was elected shall, by operation of law, vacate his seat on the council.

After publication of the population of the municipality according to the 1980 decennial census, the governing authorities of the municipality shall designate the geographical boundaries of new wards as provided in this subparagraph. Each ward shall contain as nearly as possible the population factor obtained by dividing by four (4) the city's population as shown by the 1980 and each most recent decennial census thereafter. It shall be the mandatory duty of the council to redistrict the city by ordinance, which ordinance may not be vetoed by the mayor, within six (6) months after the official publication by the United States of the population of the city as enumerated in each decennial census, and within six (6) months after the effective date of any expansion of municipal boundaries; provided, however, if the publication of the most recent decennial census or effective date of an expansion of the municipal boundaries occurs six (6) months or more prior to the first primary of a general municipal election, then the council shall redistrict the city by ordinance within at least sixty (60) days of such first primary. If the publication of the most recent decennial census occurs less than six (6) months prior to the first primary of a general municipal election, the election shall be held with regard to currently defined wards; and reapportioned wards based on the census shall not serve as the basis for representation until the next regularly scheduled election in which council members shall be elected. If annexation of additional territory into the municipal corporate limits of the city shall occur less than six (6) months prior to the first primary of a general municipal election, the city council shall, by ordinance adopted within three (3) days of the effective date of such annexation, assign such annexed territory to an adjacent ward or wards so as to maintain as nearly as possible substantial equality of population between wards. Any subsequent redistricting of the city by ordinance as required by this section shall not serve as the basis for representation until the next regularly scheduled election for city councilmen.

(2) However, in any municipality situated in a Class 1 county bordering on the Mississippi Sound and the State of Alabama, traversed by U.S. Highway 90, the legislative power of such municipality in which the council-manager plan of government is in effect shall be vested in a council consisting of a mayor and six (6) councilmen. In the next regular municipal election in such municipality, the mayor shall be elected at large by the voters of the entire municipality. Also, the councilmen shall be elected at large by the voters of the entire municipality to represent a municipality-wide district, or each of five (5) councilmen may be elected from one (1) of five (5) wards to represent said ward and one (1) councilman shall be elected to represent a municipality-wide district. This option as to wards shall be exercised by an appropriate ordinance enacted by the municipal governing body. In the event the council fails to exercise this option, the councilmen shall be elected at large to represent the municipality-wide district. Councilmen elected to represent wards must be residents of their wards.

The method of electing the mayor and councilmen shall be the same as otherwise provided by law except as provided in this chapter. The mayor and councilmen elected hereunder shall hold office for a term of four (4) years and until their successors are elected and qualified. No person shall be eligible to the office of mayor or councilman unless he is a qualified elector of such city.

(3)(a) In the event a city with a population of one hundred thousand (100,000) or more inhabitants according to the last decennial census adopts the council-manager form of government, the legislative power of said city shall be vested in a council consisting of a mayor and eight (8) councilmen.

(b) At the next regular municipal election which takes place after the adoption of the council-manager form of government, the mayor shall be elected at large by the voters of the entire municipality. The municipality shall be divided into five (5) wards with one (1) councilman to be elected from each ward by the voters of that ward, and three (3) councilmen to be elected from the municipality at large. Councilmen elected to represent wards must be residents of their wards at the time of qualification for election, and any councilman who removes his residence from the city or from the ward from which he was elected shall vacate his office.

(c) It shall be the duty of the municipal governing body existing at the time of the adoption of the council-manager form of government to designate the geographical boundaries of the five (5) wards within sixty (60) days after the election in which the council-manager form is selected. In designating the geographical boundaries of the five (5) wards, each ward shall contain as nearly as possible the population factor obtained by dividing by five (5) the city's population as shown by the most recent decennial census. It shall be the mandatory duty of the council to redistrict the city by ordinance, which ordinance may not be vetoed by the mayor, within six (6) months after the official publication by the United States of the population of the city as enumerated in each decennial census, and within six (6) months after the effective date of any expansion of municipal boundaries; however, if the publication of the most recent decennial census or effective date of an expansion of the municipal boundaries occurs six (6) months or more prior to the first primary of a general municipal election, then the council shall redistrict the city by ordinance within at least sixty (60) days of such first primary. If the publication of the most recent decennial census occurs less than six (6) months prior to the first primary of a general municipal election, the election shall be held with regard to currently defined wards; and reapportioned wards based on the census shall not serve as the basis for representation until the next regularly scheduled election in which city councilmen shall be elected. If annexation of additional territory into the municipal corporate limits of the city shall occur less than six (6) months prior to the first primary of a general municipal election, the city council shall, by ordinance adopted within three (3) days of the effective date of such annexation, assign such annexed territory to an adjacent ward or wards so as to maintain as nearly as possible substantial equality of population between wards; any subsequent redistricting of the city by ordinance as required by this section shall not serve as the basis for representation until the next regularly scheduled election for city councilmen.

(4) The method of electing the mayor and councilmen shall be the same as otherwise provided by law, except as provided in this chapter. The mayor and councilmen elected hereunder shall hold office for a term of four (4) years and until their successors are elected and qualified. No person shall be eligible to the office of mayor or councilman unless he is a qualified elector of such city.

SOURCES: Codes, 1942, §§ 3825.5-09, 3825.5-35; Laws, 1948, ch. 385, §§ 9, 35; Laws, 1952, ch. 372, §§ 8, 18; Laws, 1962, ch. 548, § 3; Laws, 1971, ch. 384, § 1; Laws, 1974, ch. 439, § 2; Laws, 1977, ch. 302, § 1; Laws, 1988, ch. 462, § 1, eff from and after January 3, 1989 (the date the United States Attorney General interposed no objection to the amendment).

Cross References — For comparable provisions under various forms of government, see §§ 21-3-7 (code charter); 21-5-5 (commission); 21-7-7 (council); and 21-8-7 and 21-8-9 (mayor-council).

Primary elections for mayor and councilmen, see § 21-9-17.

Municipal elections generally, see §§ 23-15-13, 23-15-35, 23-15-171, 23-15-173, 23-15-559, 23-15-857 and 23-15-859.

JUDICIAL DECISIONS

1. In general.

Mississippi Code § 21-9-15(2) was inapplicable to render defective a petition seeking to establish in Jackson County a new municipality, with a form of government consisting of a mayor and five council members. City of Pascagoula v. Scheffler, 487 So. 2d 196 (Miss. 1986).

The Legislature may provide by general laws for the change of the form of government of a municipal corporation and its act in so doing is valid even though it may result in legislating office holders out of office. Krebs v. Bradley, 190 So. 2d 886 (Miss. 1966).

ATTORNEY GENERAL OPINIONS

For purposes of application of the separation of powers doctrine, under a council-manager form of government, a council member is an officer in the legislature branch of government. Tynes, July 27, 2006, A.G. Op. 06-0277.

§ 21-9-17. Primary election for candidates for mayor and councilmen.

Except as otherwise provided, all candidates for mayor and councilmen, or any of them, to be voted for at any general or special municipal election, shall be nominated by party primary election, and no other name or names shall be placed on the official ballot at such general or special election than those selected in the manner prescribed herein. Such primary election or elections, shall be held not less than ten, nor more than thirty days, preceding the general or special election, and such primary election or elections shall be held and conducted in the manner as near as may be as is provided by law for state and county primary elections.

SOURCES: Codes, 1942, § 3825.5-10; Laws, 1948, ch. 385, § 10; Laws, 1952, ch. 372, § 9.

Cross References — Conduct of municipal council election, see § 21-9-19.

Municipal elections generally, see §§ 23-15-13, 23-15-35, 23-15-171, 23-15-173, 23-15-559, 23-15-857 and 23-15-859.

§ 21-9-19. Conduct of municipal council election; declaring results.

At all elections held to choose a mayor and councilmen, or any of them, the choice of the person or persons voting shall be indicated and the ballots shall be marked in like manner as is provided by law for general state and county elections. In all cases in which two or more persons are to be elected to the same office, the failure on the part of any elector to indicate his choice for as many candidates as there are officers to be elected to such office, shall render his ballot void as to any candidate voted for by him for such office.

The managers of election at all special and general elections for mayor and councilmen, or any of them, shall immediately, upon the closing of the polls, count the ballots and ascertain the number of votes cast in each voting precinct for each of the candidates and make return thereof to the municipal election commissioners. On the day following any special or general election, the said election commissioners shall canvass said returns so received from all the voting precincts, and shall within five days after such special or general election, deliver to each person receiving the highest number of votes a certificate of election. If it shall appear by the returns that any two candidates for mayor or councilmen, have received an equal number of votes, the election shall be decided by lot, fairly and publicly drawn by the election commissioners, with the aid of a friend of each such candidates, and a certificate of election shall be given accordingly.

The election commissioners shall, within five days after any special or general election, certify to the secretary of state the name or names of the person or persons elected at such special or general election, and the secretary of state shall, immediately upon receiving such certificates, deliver the same to the governor, who shall immediately issue commissions to the persons mentioned in certificate.

SOURCES: Codes, 1942, §§ 3825.5-11, 3825.5-12; Laws, 1948, ch. 385, §§ 11, 12.

Cross References — For comparable provisions under various forms of government, see §§ 21-5-3 (commission); 21-7-7 (council); and 21-8-7 (mayor-council).

Primary election for candidates for mayor and councilmen, see § 21-9-17.

Municipal elections generally, see §§ 23-15-13, 23-15-35, 23-15-171, 23-15-173, 23-15-559, 23-15-857 and 23-15-859.

ATTORNEY GENERAL OPINIONS

For appointments made under § 21-9-29(d), under the city manager's administrative authority in subsection (a) of this section, the city manager may reassign non-statutory duties except he may not do so where such reassignment would conflict with an ordinance adopted by the city council establishing the duties of an office or department pursuant to § 21-9-45. Ramsey, Nov. 30, 2004, A.G. Op. 04-0583.

§ 21-9-21. Appointment of officials and employees of city other than councilmen and mayor; surety bond.

In a city in which the council-manager plan of government is in effect under the provisions of this chapter, no city official or employee shall be elected by the voters except members of the council and the mayor. All other officials and employees shall be appointed as hereinafter provided.

The city council shall require all officers and employees handling or having the custody of any of the public funds of such municipality to give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in an amount to be determined by the council (which shall not be less than Fifty Thousand Dollars ($50,000.00)), the premium on which bonds shall be paid by the city.

SOURCES: Codes, 1942, § 3825.5-13; Laws, 1948, ch. 385, § 13; Laws, 1950, ch. 503, § 1; Laws, 1986, ch. 458, § 26; Laws, 1988, ch. 488, § 5; Laws, 2009, ch. 467, § 9, eff from and after July 1, 2009.

Cross References — For comparable provisions under various other forms of government, see §§ 21-5-9, 21-5-11 (commission); 25-7-11 (council); and 21-8-23 (mayor-council).

Surety bond required for certain appointed municipal officers, see § 21-15-38.

§ 21-9-23. Transfer of administrative functions to city manager.

Members of the city council shall have no administrative powers or duties. All such powers or duties vested in members of the governing body of the city before adoption of the council-manager plan of government shall be transferred to the city manager or his subordinates.

SOURCES: Codes, 1942, § 3825.5-24; Laws, 1948, ch. 385, § 24.

§ 21-9-25. City manager; choosing thereof.

The first city council elected under the provisions of this chapter shall at its first meeting employ by majority vote of all its members a city manager who shall be the chief administrative officer of the city. The manager shall receive such compensation as the council shall determine, and shall be chosen solely on the basis of his or her experience and administrative qualifications. The manager shall not engage in any other business or profession that conflicts with the duties of the office of city manager so long as such person holds the office of city manager. Before the city manager engages in any other business or profession, the manager shall give notice of such business or profession to the city council. No person elected to the city council shall be eligible for the office of city manager during the term for which the person was elected.

If the office of city manager becomes vacant, the city council shall appoint without delay a new manager or an acting manager to fill the office until a new manager is designated.

In case of the absence or disability of the city manager, the city council may appoint a qualified person to perform the duties of the city manager temporarily.

SOURCES: Codes, 1942, §§ 3825.5-15, 3825.5-20; Laws, 1948, ch. 385, §§ 15, 20; Laws, 2011, ch. 436, § 1, eff from and after passage (approved Mar. 23, 2011.)

Cross References — Chief administrative officers under other forms of government, see §§ 21-3-25 (code charter); and 21-8-25 (mayor-council).

Term of office and removal of city manager, see § 21-9-27.

Duties of city manager, see § 21-9-29.
City manager excluded from civil service laws, see § 21-9-79.

§ 21-9-27. City manager; term of office; removal.

The city manager shall hold office for such period (not to exceed four years for any one specified period) as may be provided by ordinance, and shall be eligible for reemployment, successively or otherwise. The manager may be removed at any time by a vote of a majority of all the members of the council. However, he shall not be so removed until the reasons for his proposed removal have been furnished him in writing, and until he has received a public hearing thereon before the council, if he so requests. Pending and during such hearing the council may suspend him from office.

SOURCES: Codes, 1942, § 3825.5-16; Laws, 1948, ch. 385, § 16; Laws, 1952, ch. 372, § 11.

Cross References — Choosing a city manager, see § 21-9-25.
Duties of city manager, see § 21-9-29.
City manager excluded from civil service laws, see § 21-9-79.

ATTORNEY GENERAL OPINIONS

The city manager, not the city council, appoints police officers. The police chief may but need not recommend that the city manager hire a certain police officer. Walker, Aug. 1, 2003, A.G. Op. 03-0285.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 182, 183.

CJS. 62 C.J.S., Municipal Corporations §§ 467-470.

§ 21-9-29. Duties of city manager.

The city manager shall, subject to law:

(a) be responsible to the council for the entire administration of the city government;

(b) prepare and recommend to the council an annual budget;

(c) administer and secure the enforcement of all laws and ordinances of the city;

(d) appoint and remove all department heads and other employees of the city, except that notwithstanding any other provisions of this chapter, the council shall appoint the city attorney, the auditor, and the police justice, if any, and the council may, in its discretion, appoint the city clerk and treasurer;

(e) supervise and control all department heads and other employees and their subordinates;

(f) negotiate contracts and make all purchases for the city, subject to existing laws and subject to the approval of the council;

(g) see that all terms and conditions imposed in favor of the city or its inhabitants in any statute or municipal ordinance regarding public utility franchises or other contracts are faithfully kept and performed, and upon knowledge of any violation thereof call the same to the attention of the council;

(h) make such recommendations to the council as he may deem expedient or necessary;

(i) make reports or recommendations to the council upon request, and at least once a year present a written report of his work and the financial condition of the city for the information of the council and of the public;

(j) perform such other duties as may be required by ordinance or resolution of the city council.

SOURCES: Codes, 1942, §§ 3825.5-17, 3825.5-27; Laws, 1948, ch. 385, §§ 17, 27; Laws, 1950, ch. 503, § 2; Laws, 1952, ch. 372, §§ 12, 14.

Editor's Note — Section 21-23-1 provides that wherever the words "police justice" appear in the laws of this state they shall mean municipal judge.

Cross References — Choosing city manager, see § 21-9-25.

Term of office and removal of city manager, see § 21-9-27.

City manager excluded from civil service laws, see § 21-9-79.

Surety bond required for certain appointed municipal officers, see § 21-15-38.

General powers of a municipality, see §§ 21-17-1 et seq.

Police department and municipal court, see §§ 21-21-1 et seq., 21-23-1 et seq.

Fire department, see §§ 21-25-1 et seq.

Public utilities and transportation, see §§ 21-27-1 et seq.

Municipal employees' retirement and disability systems, see §§ 21-29-1 et seq.

Appointment and removal of civil service employees of municipality, see §§ 21-31-1 et seq.

Municipal bond issues and other tax and fiscal matters, see §§ 21-33-1 et seq.

Municipal budgets generally, see §§ 21-35-1 et seq.

Municipal contracts and claims, see §§ 21-39-3 et seq.

Authority to lease lands to the United States for the purpose of securing construction of air national guard armories, see § 33-11-15.

JUDICIAL DECISIONS

1. In general.
2. Leases.

1. In general.

Since this section [Code 1942, § 3825.5-17] confers upon the manager of a city operating under a council-manager plan of government the power to employ a city engineer and to supervise and control him in the performance of his duties, the court could not interfere with the exercise of such powers of the city manager, or prohibit the city engineer from accepting employment with the performance of engineering services for private individuals upon his own time, since neither the legislature nor the city council had seen fit to impose such restrictions. Damon v. Slaughter, 233 Miss. 117, 101 So. 2d 342 (1958).

2. Leases.

A city manager may not enter into leases or negotiate regarding them, although a city council perhaps could delegate specific authority. JLG Concrete Prods. Co. v. City of Grenada, 722 So. 2d 1283 (Miss. Ct. App. 1998).

ATTORNEY GENERAL OPINIONS

Under Miss. Code Section 21-9-29, city manager has general oversight responsibility as to police department, but does not have responsibility for daily operations of department. Ramsay, Mar. 10, 1993, A.G. Op. #93-0155.

The police chief serves at the will and pleasure of the city manager and is subject to his direction and control. Johnson, Nov. 5, 2004, A.G. Op. 04-0547.

A city manager may reorganize city government and realign job responsibilities of the employment positions and offices reporting to him, except that in those cases where the city council creates an office or department, and assigns those offices or departments specific powers and duties in accordance with § 21-9-45, the city manager is bound by the provisions of that ordinance. Ramsey, Nov. 30, 2004, A.G. Op. 04-0583.

In the council-manager form of government neither the city attorney nor the municipal judge are administrative positions, therefore they are not subject to the administrative control of the city manager. Ramsey, Nov. 30, 2004, A.G. Op. 04-0583.

For those appointments made by the city council under subsection (d) of this section, the city council has the authority to determine to whom those appointees report; however, the city attorney and municipal judge, as non-administrative positions, must be assigned to the city council. Ramsey, Nov. 30, 2004, A.G. Op. 04-0583.

For appointments made under subsection (d) of this section, under the city manager's administrative authority in § 21-9-19 (a), the city manager may reassign non-statutory duties except he may not do so where such reassignment would conflict with an ordinance adopted by the city council establishing the duties of an office or department pursuant to § 21-9-45. Ramsey, Nov. 30, 2004, A.G. Op. 04-0583.

Once a municipality establishes a civil service system in accordance with state law, the municipality is required to act in accordance with those lawfully adopted rules, regulation and procedures governing the municipality's civil service system. Ramsey, Nov. 30, 2004, A.G. Op. 04-0583.

A city manager must choose a new employee from the list of those eligible candidates or applicants who have completed the requirements and meet the criteria set forth by the civil service commission rules and regulations. Tynes, Aug. 4, 2006, A.G. Op. 06-0314.

The city manager holds the authority to set and approve minimum job qualifications, requirements and job descriptions for municipal jobs other than those created by the council under Miss. Code Ann. § 21-9-45. A city manager may reject a job candidate list and form a new one using new job requirements, provided that the new job requirements are appropriate and consistent with state law, the proposed action does not violate the Civil Service Commission regulation, and the new list contains candidates that meet the criteria set forth by the Civil Service Commission. Tynes, March 9, 2007, A.G. Op. #07-00092, 2007 Miss. AG LEXIS 97.

§ 21-9-31. Control of manager and his subordinates by council.

Neither the mayor nor any of the members of the council or committees of the council shall direct or dictate the appointment of any person to or his removal from office by the manager or any of his subordinates. Except for the purposes of inquiring or receiving information or advice, the mayor and council and the several members thereof shall deal with the administrative services solely through the manager and neither the mayor nor any member of the council shall give orders to any subordinate of the city. The city council shall have the power to investigate any part of the city government and for that purpose to compel the attendance of witnesses and the production of documents and other evidence.

SOURCES: Codes, 1942, § 3825.5-18; Laws, 1948, ch. 385, § 18.

Cross References — For comparable provisions under various other forms of government, see §§ 21-3-15 (code charter); and 21-8-13 (mayor-council).

§ 21-9-33. Attendance of manager and other officials at council meetings.

The manager and such other officers as the council shall determine shall meet regularly with the city council and have full privileges of discussion but no vote.

SOURCES: Codes, 1942, § 3825.5-19; Laws, 1948, ch. 385, § 19.

Cross References — Council meetings, see § 21-9-39.

§ 21-9-35. City council to act as governing body of city.

The mayor and councilmen shall constitute the governing body of such city or town and shall be known as the city council or the town council as the case may be. Except as limited in this chapter, the city council shall have, exercise and perform all executive, legislative and judicial powers, duties and obligations vested by law in the mayor and governing body acting for the city at the time of the adoption by such city of the council-manager form of government.

The corporate name of every such city or town shall be "The City of (name of city)," or "The Town of (name of town)," under which name the council shall exercise and perform all the corporate powers, duties and obligations conferred or imposed on it or the members thereof.

SOURCES: Codes, 1942, §§ 3825.5-14, 3825.5-29; Laws, 1948, ch. 385, §§ 14, 29; Laws, 1952, ch. 372, § 10.

Cross References — Naming or renaming municipality, see §§ 21-1-5, 21-1-7.

Powers of council under various other forms of government, see §§ 21-3-15 (code charter); 21-5-9 (commission); 21-7-11 (council); and 21-8-13 (mayor-council).

Corporate names under various other forms of government, see §§ 21-5-3 (commission) and 21-8-37 (mayor-council).

General powers of governing authorities, see § 21-17-5.

JUDICIAL DECISIONS

1. In general.

A provision in the charter of the city of Meridian under Laws of 1888, ch 228, § 15, imposing personal liability upon municipal officers for appropriating money to any object not authorized by the charter, was carried forward when the city subsequently adopted the council-manager form of government. Paine v. Matthews, 213 Miss. 506, 57 So. 2d 148 (1952).

ATTORNEY GENERAL OPINIONS

The city manager, not the city council, appoints police officers. The police chief may but need not recommend that the city manager hire a certain police officer. Walker, Aug. 1, 2003, A.G. Op. 03-0285.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 141 et seq.; 154 et seq.

CJS. 62 C.J.S., Municipal Corporations, §§ 269, 270.

§ 21-9-37. Function of the mayor.

The mayor shall be the titular head of the city for all ceremonial purposes and for all processes of law. He shall be the president of the council and shall have a voice and vote in its proceedings, but no power of veto. He shall have no administrative powers. In case of his absence or disability, the council may appoint another of its members to fulfill his duties temporarily.

SOURCES: Codes, 1942, § 3825.5-14; Laws, 1948, ch. 385, § 14; Laws, 1952, ch. 372, § 10.

Cross References — Acting mayor, vacancy in office under other forms of government, see §§ 21-3-13 (code charter); 21-5-7 (commission); 21-7-13 (council); and 21-8-19 (mayor-council).

Powers and duties of mayor under other forms government, see §§ 21-3-15 (code charter); 21-5-7 (commission); 21-7-13 (council); and 21-8-15 and 21-8-17 (mayor-council).

Other specific powers and duties of mayor, see §§ 21-15-7 through 21-15-15.

Duty of mayor to notify governor whenever local resources inadequate to cope with emergencies, see § 33-7-301.

Emergency powers under civil defense law, see §§ 33-15-1 et seq.

ATTORNEY GENERAL OPINIONS

The city manager, not the city council, appoints police officers. The police chief may but need not recommend that the city manager hire a certain police officer. Walker, Aug. 1, 2003, A.G. Op. 03-0285.

§ 21-9-39. Meetings of the council; quorum; voting.

(1) Regular public meetings of the council shall be held on the first Tuesday of each month, at such time of day as the council may provide. When a regular meeting of the council shall fall on a holiday, the council shall meet the following day. Special meetings may be called at any time by the mayor or two (2) councilmen on at least two (2) days' notice to the mayor and each member of the council. A special meeting may also be held at any time by written consent of the mayor and all members of the council. At all meetings of the council, a majority of the members thereof shall constitute a quorum. The quorum required by this section may be established by teleconference or video

means as provided in Section 25-41-5(2)(b). The affirmative vote of a majority of all of the members of the council shall be necessary to adopt any motion, resolution or ordinance, or to pass any measure whatever, unless a greater number is provided in this chapter. Upon every vote taken by the council, the yeas and nays shall be called and recorded, and every motion, resolution or ordinance shall be reduced to writing before the vote is taken thereon. Upon request of one or more council members, any motion, resolution or ordinance shall be read by the clerk before the vote is taken thereon. The city or town manager may be appointed only at a regular meeting of the council with no less than a majority of the members, plus one (1), in attendance.

(2) The council may, pursuant to Section 21-17-17, set a day other than Tuesday for the holding of its regular monthly meeting.

SOURCES: Codes, 1942, § 3825.5-28; Laws, 1948, ch. 385, § 28; Laws, 1952, ch. 372, § 15; Laws, 1973, ch. 324, § 3; Laws, 1979, ch. 403, § 5; Laws, 1987, ch. 503, § 4; Laws, 2012, ch. 442, § 6, eff September 20, 2012 (the date the United States Attorney General determined that the amendment of this section was not subject to Section 5 of the Voting Rights Act of 1965).

Editor's Note — By letter dated September 20, 2012, the United States Attorney General determined that the amendments to this section by Chapter 442, Laws of 2012, were not subject to preclearance under Section 5 of the Voting Rights Act of 1965, as amended and extended.

Cross References — Moving municipality's site of government in emergency resulting from enemy attack, see §§ 17-7-1 et seq.

Meetings of governing authorities under various forms of government, see §§ 21-3-19 (code charter); 21-5-13 (commission); 21-7-9 (council); and 21-8-11 (mayor-council).

Requirement of open and public meetings, see §§ 25-41-1 et seq.

ATTORNEY GENERAL OPINIONS

A municipal ordinance, be it related to zoning of property or any other subject, may not be adopted or amended without affirmative action of the governing authorities. Cruthird, Nov. 19, 1999, A.G. Op. #99-0619.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 156 et seq.

CJS. 62 C.J.S., Municipal Corporations §§ 284 et seq, 287 et seq.

§ 21-9-41. Mayor and councilmen not required to have offices or office hours.

Neither the mayor nor councilmen shall be required to have any office in the city hall, nor shall they be required to have any office hours.

SOURCES: Codes, 1942, § 3825.5-23; Laws, 1948, ch. 385, § 23.

Cross References — Hours of service of city officers and employees, see § 21-9-47.

§ 21-9-43. Council members shall not serve as members of commissions or boards under their control.

A member of the city council shall neither be a member of any commission or board appointed by the city council nor serve as a member of any commission or board under the jurisdiction of the city council, except as otherwise provided by law.

SOURCES: Codes, 1942, § 3825.5-13; Laws, 1948, ch. 385, § 13; Laws, 1950, ch. 503, § 1.

§ 21-9-45. Reorganization of city government at behest of council.

The council may, by ordinance, create new departments and offices as shall appear proper but only on recommendation of the city manager, and shall likewise fix the powers and duties and number of employees and compensation therefor.

SOURCES: Codes, 1942, § 3825.5-25; Laws, 1948, ch. 385, § 25.

Cross References — Transfer of administrative functions from city council to city manager, see § 21-9-23.

ATTORNEY GENERAL OPINIONS

A city manager may reorganize city government and realign job responsibilities of the employment positions and offices reporting to him, except that in those cases where the city council creates an office or department, and assigns those offices or departments specific powers and duties in accordance with this section, the city manager is bound by the provisions of that ordinance. Ramsey, Nov. 30, 2004, A.G. Op. 04-0583.

For appointments made under § 21-9-29(d), under the city manager's administrative authority in § 21-9-19(a), the city manager may reassign non-statutory duties except he may not do so where such reassignment would conflict with an ordinance adopted by the city council establishing the duties of an office or department pursuant to this section. Ramsey, Nov. 30, 2004, A.G. Op. 04-0583.

Under this section, the city manager in the council-manager form of government may create a new employment position only by recommending such new position to the city council and the city council approving it. Ramsay, Feb. 4, 2005, A.G. Op. 05-0006.

Under this section and § 21-9-63, the city council must fix the salary set for employees in new employment positions, and it must approve salary increases for employees in existing employment positions. Ramsay, Feb. 4, 2005, A.G. Op. 05-0006.

The city manager holds the authority to set and approve minimum job qualifications, requirements and job descriptions for municipal jobs other than those created by the council under Miss. Code Ann. § 21-9-45. A city manager may reject a job candidate list and form a new one using new job requirements, provided that the new job requirements are appropriate and consistent with state law, the proposed action does not violate the Civil Service Commission regulation, and the new list contains candidates that meet the criteria set forth by the Civil Service Commission. Tynes, March 9, 2007, A.G. Op. #07-00092, 2007 Miss. AG LEXIS 97.

§ 21-9-47. Hours of service of city officers and employees.

The city council shall, by resolution, fix the hours of service of all officers and employees of the city.

SOURCES: Codes, 1942, § 3825.5-23; Laws, 1948, ch. 385, § 23.

Cross References — Mayor and councilmen not required to have office hours, see § 21-9-41.

§§ 21-9-49 and 21-9-51. Repealed.

Repealed by Laws, 1980, ch. 330, eff from and after April 14, 1980.

§ 21-9-49. [Codes, 1942, § 3825.5-31; Laws, 1948, ch. 385, § 31; Laws, 1956, ch. 403]

§ 21-9-51. [Codes, 1942, § 3825.5-32; Laws, 1948, ch 385, § 32; Laws, 1952, ch. 372, § 17]

Editor's Note — Former § 21-9-49 provided for the limitation of the power of council as to certain orders, resolutions, and ordinances.

Former § 21-9-51 provided for the effective date of ordinances.

§ 21-9-53. Annual examination and statement to be made by council.

At the end of each fiscal year, the council shall cause a full and complete examination of all the books, accounts and vouchers of the city to be made by a competent accountant or accountants. The report of said examination shall be typed or printed in pamphlet form including a detailed, itemized statement of all receipts and disbursements for the year, and a summary of the proceedings of the council during the year. The council shall furnish a copy of said pamphlet, free of charge, to all persons who shall apply therefor at the office of the clerk, and shall cause three of the printed copies of said pamphlet for each fiscal year to be substantially bound in three volumes, which shall be kept and preserved as a record of the clerk's office. Said pamphlets shall be published as now provided by law.

SOURCES: Codes, 1942, § 3825.5-38; Laws, 1948, ch. 385, § 38; Laws, 1952, ch. 372, § 19.

Cross References — Comparable provision under mayor-council form of government, see § 21-8-13.

§ 21-9-55. Appropriations by first elected council.

If at the beginning of the first term of office of the first city council elected by any city under the provisions of this chapter, the appropriations for the expenditures for the city government for the current fiscal year shall have been made, the council shall have power, by ordinance, to revise, to repeal, or change said appropriations and to make additional appropriations.

SOURCES: Codes, 1942, § 3825.5-39; Laws, 1948, ch. 385, § 39.

Cross References — Municipal budget generally, see §§ 21-35-1 et seq.

§ 21-9-57. Power of council may be limited as to tax rates or bond issuances.

Any city operating under the council-manager form of government may by ordinance adopted by the council and approved by a two-thirds majority of the qualified electors, voting thereon, at a special or general election in such city, fix the maximum rate of general taxation to be thereafter levied by the council, and also fix the maximum amount of the bonds or other obligations of such city that may be issued, any general or special law applicable to such city to the contrary notwithstanding. However, in the absence of such ordinance or ordinances, so adopted and approved, the maximum rate of general taxation in such city and the maximum amount of the bonds or obligations of such city that may be issued, shall be the same as is provided elsewhere by law or the charter of such city.

SOURCES: Codes, 1942, § 3825.5-42; Laws, 1948, ch. 385, § 42.

Cross References — Municipal taxation and finance, see §§ 21-33-1 et seq.
Municipal bond issues generally, see §§ 21-33-301 et seq.

§ 21-9-59. Council may redistrict wards and voting precincts.

The council is authorized to provide by ordinance for the division of the wards, or if there be no wards, for the division of the municipality, into such number of voting precincts as may be necessary, each as nearly as possible containing the same number of qualified electors.

SOURCES: Codes, 1942, § 3825.5-43; Laws, 1948, ch. 385, § 43; Laws, 1952, ch. 372, § 20; Laws, 1962, ch. 548, § 4, eff from and after passage (approved May 22, 1962).

§ 21-9-61. Compensation of mayor and councilmen.

The compensation of mayor and councilmen in cities operating under the council-manager plan shall be fixed by ordinance of the council.

SOURCES: Codes, 1942, § 3825.5-21; Laws, 1948, ch. 385, § 21; Laws, 1952, ch. 372, § 13; Laws, 1974, ch. 439, § 3; Laws, 1981, ch. 534, § 1, eff from and after July 1, 1981.

Cross References — For comparable provisions under various forms of government, see §§ 21-3-9 (code charter); 21-5-5 (commission); 21-7-7, 21-7-13 (council); and 21-8-21 (mayor-council).

§ 21-9-63. Salaries and their payment; overtime to members of police and fire departments.

The salary of the mayor, councilmen and all officers and assistants holding any office created by this chapter or by ordinance shall be paid in monthly installments on the first business day of each month, and the salaries or wages of all other employees of such city shall be paid at such periods as may be fixed by the council. No salaries or wages shall be paid to any officer or employee of such city until after the same shall have been earned.

Every officer or assistant, other than the mayor and councilmen, shall receive such salary or compensation as the council shall by ordinance, provide, and the salary compensation of all other employees of such city shall be fixed by the council from time to time, as occasion may demand.

The city council of any city operating under the provisions of this chapter shall have the power and authority to provide for and pay to any member of the police department or fire department of such city additional compensation for services and duties performed by any such member over and above the usual and regular number of days and hours per week or month ordinarily worked by such member. Any additional compensation so paid shall be computed on the basis of the compensation regularly paid to such members of the police or fire department. Nothing herein contained shall be construed to relieve any such member of the police department or fire department from being subject to call for duty on a twenty-four hour basis whether or not additional compensation is paid.

SOURCES: Codes, 1942, § 3825.5-22; Laws, 1948, ch. 385, § 22; Laws, 1952, ch. 373.

Cross References — For comparable provisions under various other forms of government, see §§ 21-3-9 (code charter); 21-5-5 (commission); 21-7-7, 21-7-13 (council); 21-8-21 (mayor-council).

Police departments generally, see §§ 21-21-1 et seq.

Fire departments generally, see §§ 21-25-1 et seq.

ATTORNEY GENERAL OPINIONS

Under § 21-9-45 and this section, the city council must fix the salary set for employees in new employment positions, and it must approve salary increases for employees in existing employment positions. Ramsay, Feb. 4, 2005, A.G. Op. 05-0006.

§ 21-9-65. Petitions for special election.

Except as otherwise provided for, no special election shall be held, and no ordinance, in which any petition or protest is required, shall be referred to, or voted on, at any election unless, within the time allowed by the terms hereof, a sufficient petition or petitions, addressed to the mayor, demanding such election or protesting against or requesting the adoption of such ordinances, shall be personally signed by at least twenty-five per centum of all the qualified electors of such city and filed with the city clerk. Immediately upon the filing of any such petition or petitions with the city clerk, he shall endorse thereon the date of such filing and shall within ten days thereafter, verify the signatures thereto by the registration and poll books, and deliver such petition or petitions to the mayor of such city, together with the certificate of such clerk showing the total number of qualified electors of such city and also the total number of qualified electors who shall have signed such petition or petitions, which certificate shall be prima facie correct but not conclusive. If it shall appear from said petition or petitions and the certificate of such clerk that the same are in proper form and have been signed by the required number of the qualified electors of such city, it shall be the duty of the council at its next regular meeting to order such special election, or refer such ordinance to a vote of the electors of such city, in case of their failure to wholly repeal the same. Each and every petition shall, at the time the same is filed with the city clerk, have attached thereto the affidavit of one or more of the signers thereto, stating the total number of names signed to such petition at the time of filing the same, and no such petition shall be received or filed by the city clerk unless such affidavit is attached thereto.

SOURCES: Codes, 1942, § 3825.5-33; Laws, 1948, ch. 385, § 33.

Cross References — Municipal elections generally, see §§ 23-15-13, 23-15-35, 23-15-171, 23-15-173, 23-15-559, 23-15-857, and 23-15-859.

§ 21-9-67. Ordering by council of special elections.

Whenever any ordinance or resolution adopted by the council, or any other matter, is required to be referred to a vote of the qualified electors of any city, the council shall order a special election for the determination of the matter, to be held no less than thirty days nor more than sixty days from the making of such order, provided that there shall not be a general election to be held in such city within sixty days from the date of the order referring such matter to the judgment of the electors. In case there is to be such a general election, the matter shall be referred to and voted upon at such general election. All such special elections shall be held and conducted as other elections in such city.

SOURCES: Codes, 1942, § 3825.5-41; Laws, 1948, ch. 385, § 41.

Cross References — Conduct of elections generally concerning the council-manager plan of government, see §§ 21-9-11, 21-9-69.

Municipal elections generally, see §§ 23-15-13, 23-15-35, 23-15-171, 23-15-173, 23-15-559, 23-15-857, and 23-15-859.

§ 21-9-69. Conduct of elections.

Except as otherwise provided in this chapter, all elections of every kind, special or otherwise, shall be conducted in any city operating under the council-manager form of government in the same manner and method and under the same laws and regulations as the same would have been conducted if the council-manager plan of government had not been adopted.

SOURCES: Codes, 1942, § 3825.5-47; Laws, 1948, ch. 385, § 47.

Cross References — Conduct of elections for adopting or discontinuing the council-manager plan of government, see § 21-9-11.

Municipal elections generally, see §§ 23-15-13, 23-15-35, 23-15-171, 23-15-173, 23-15-559, 23-15-857 and 23-15-859.

§ 21-9-71. Election offenses.

Any officer or employee other than the mayor and councilmen of any such city, who shall solicit or attempt to influence any person to vote for any particular candidate at any election held in such city, or who shall in any manner contribute any money, labor or other valuable thing to any person or organization for election purposes, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding One Hundred Dollars ($100.00), or by imprisonment in the county jail not exceeding thirty days, or by both such fine and imprisonment.

SOURCES: Codes, 1942, § 3825.5-37; Laws, 1948, ch. 385, § 37.

Cross References — Election offenses in connection with other forms of government, see §§ 21-5-21 (commission); and 21-8-31 (mayor-council).

Conservation officers prohibited from engaging in political campaigns, see § 49-1-19.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections §§ 459, 464.

CJS. 29 C.J.S., Elections §§ 540 et seq.

§ 21-9-73. Repealed.

Repealed by Laws, 1983, ch. 469, § 10, eff from and after July 1, 1983. [Codes, 1942, § 3825.5-36; Laws, 1948, ch. 385, § 36]

Editor's Note — Former § 21-9-73 specified prohibited interests of officers and employees and the penalties for violations.

§ 21-9-75. Police court and public schools unaffected by reorganization.

This chapter shall not in any manner, irrespective of other provisions hereof, affect the organization of the police court or of the public schools, which shall continue to operate by and under the laws otherwise applicable.

SOURCES: Codes, 1942, § 3825.5-27; Laws, 1948, ch. 385, § 27; Laws, 1952, ch. 372, § 14.

Editor's Note — Section 21-23-1 provides that wherever the words "police court" appear in the laws of this state they shall mean municipal court.

Cross References — Police court and public schools unaffected by reorganization under mayor-council form of government, see § 21-8-35.

Municipal courts generally, see §§ 21-23-1 et seq.

§ 21-9-77. Existing laws, rights and liabilities of city unaffected by reorganization.

All laws governing cities heretofore operating under another form of government, which are not inconsistent with the provisions of this chapter respecting the council-manager plan of government, shall apply to and govern such cities respectively when they shall come under the said council-manager plan. All by-laws, ordinances and resolutions lawfully passed and in force in every such city under its former organization shall remain in force until altered or repealed by the council elected under the provisions of this chapter.

The territorial limits of every such city shall remain the same as under its former organization. All rights and property of every description, which were vested in every such city under its former organization, shall vest in the same under the organization contemplated by the council-manager plan of government. No right or liability, either in favor of or against such city, and no suit or prosecution of any kind shall be affected by such change, unless otherwise provided.

SOURCES: Codes, 1942, § 3825.5-26; Laws, 1948, ch. 385, § 26.

Cross References — For comparable provisions under various forms of government, see §§ 21-5-19 (commission); 21-7-17 (council); 21-8-33 and 21-8-35 (mayor-council).

JUDICIAL DECISIONS

1. In general.

A provision in the charter of the city of Meridian under Laws of 1888, ch. 228, § 15, imposing personal liability upon municipal officers for appropriating money to any object not authorized by the charter, was carried forward when the city subsequently adopted the council-manager form of government. Paine v. Matthews, 213 Miss. 506, 57 So. 2d 148 (1952).

§ 21-9-79. Application of civil service laws.

All of the provisions of the civil service laws applying to any city adopting the council-manager plan of government, at the time of such adoption shall continue to apply in full force and effect to such city after adoption of such council-manager plan of government. The civil service commission existing and operating under the former plan of government shall continue to operate without interruption or impairment under the council-manager form of government. All rights, privileges, and advantages of all employees coming under the civil service laws, applying to said city at the time of adoption shall remain in full force and effect and shall in no wise be impaired, altered or changed by such adoption. After the election and taking of office of the councilmen and mayor under the council-manager plan of government, all functions and duties of every nature that would have otherwise been performed by the council under the commission form of government in relation to such civil service laws shall thereafter be exercised and performed by the city council under the council-manager plan of government, except that all appointments of employees coming under the provisions of such civil service laws shall be made, subject to such civil service laws, by the city manager, but all appointments made prior to the change to the council-manager plan shall remain in full force and effect.

The city manager is expressly excluded from coming under the terms and provisions of the civil service laws herein mentioned and is expressly excluded from the employees therein included.

SOURCES: Codes, 1942, § 3825.5-44; Laws, 1948, ch. 385, § 44.

Cross References — Civil service laws generally, see §§ 21-31-1 et seq.

§ 21-9-81. Provisions as to disability and relief fund for firemen and policemen to continue unaffected.

All of the provisions of Sections 21-25-5, 21-25-7, and 21-29-101 through 21-29-151, shall be applicable to any city operating under the council-manager plan as herein provided, and all rights of every policeman and fireman of any such city under the disability and relief fund for firemen and policemen shall be unimpaired, and there shall be no interruption or change in the operation or administration of the disability and relief fund for firemen and policemen, and other city employees.

SOURCES: Codes, 1942, § 3825.5-45; Laws, 1948, ch. 385, § 45.

Cross References — Creation and operation of firemen's and policemen's disability and relief funds, see §§ 21-29-101 et seq., 21-29-201 et seq.

§ 21-9-83. General and special laws and statutes to be construed as applicable to council.

Wherever, in any general or special law or statute, any power is conferred or duty enjoined or penalty imposed upon any officer, commission, board, or other body, acting for a city, such law or statute shall be held to confer such power and to enjoin such duty and impose such penalty upon the council, and the members thereof, in cities operating under a council-manager form of government. Whenever in this chapter or in any statute of this state, the word "franchise" is used it shall, when applied to cities operating under council-manager form of government, include every special privilege in the streets, highways, and public places of the city, whether granted by the state or the city, which does not belong to the citizens generally by common right.

SOURCES: Codes, 1942, § 3825.5-40; Laws, 1948, ch. 385, § 40.

CHAPTER 11

Municipal Elections
[Repealed]

For provisions of the Mississippi Election Code, which became effective January 1, 1987, see §§ 23-15-1 et seq.

§§ 21-11-1 through 21-11-23. Repealed.

Repealed by Laws, 1986, ch. 495, § 329, eff from and after January 1, 1987.

§ 21-11-1. [Codes, 1892, § 3028; 1906, § 3433; Hemingway's 1917, § 5993; 1930, § 2595; 1942, § 3374-60; Laws, 1950, ch. 491, § 60; Laws, 1984, ch. 457, § 2]

§ 21-11-3. [Codes, 1892, § 3029; 1906, § 3434; Hemingway's 1917, § 5994; 1930, § 2596; 1942, § 3374-61; Laws, 1904, ch. 158; Laws, 1950, ch. 491, § 61; Laws, 1984, ch. 457, § 3]

§ 21-11-5. [Codes, Hemingway's 1917, § 6043; 1930, § 2631; 1942, § 3374-63; Laws, 1912, ch. 120; Laws, 1950, ch. 491, § 63]

§ 21-11-7. [Codes, 1930, § 2597; 1942, § 3374-62; Laws, 1922, ch. 219; Laws, 1928, ch. 184; Laws, 1932, ch. 226; Laws, 1936, ch. 281; Laws, 1950, ch. 491 § 62; Laws, 1976, ch. 485, § 11]

§ 21-11-8. [En Laws, 1976, ch. 485, § 12]

§ 21-11-9. [Codes, 1892, § 3031; 1906, § 3436; Hemingway's 1917, § 5996; 1930, § 2598; 1942, § 3374-64; Laws, 1950, ch. 491, § 64; Laws, 1971, ch. 494, § 1; Laws, 1984, ch. 457, § 329]

§ 21-11-11. [Codes, 1942, § 3374-108; Laws, 1950, ch. 491, § 108; Laws, 1984, ch. 457, § 329]

§ 21-11-13. [Codes, 1892, § 3032; 1906, § 3437; Hemingway's 1917, § 5997; 1930, § 2599; 1942, § 3374-65; Laws, 1950, ch. 491, § 65; Laws, 1984, ch. 457, § 329]

§ 21-11-15. [Codes, Hemingway's 1917, § 6044; 1930, § 2632; 1942, § 3374-66; Laws, 1912, ch. 120; Laws, 1950, ch. 491, § 66; Laws, 1984, ch. 457, § 329]

§ 21-11-17. [Codes, 1892, § 3033; 1906, § 3438; Hemingway's 1917, § 5998; 1930, § 2600; 1942, § 3374-67; Laws, 1950, ch. 491, § 67; Laws, 1984, ch. 457, § 329]

§ 21-11-19. [Codes, 1942, § 3374-69.5; Laws, 1948, ch. 314; Laws, 1984, ch. 457, § 329]

§ 21-11-21. [Codes, 1942, § 3374-69.7; Laws, 1958, ch. 516; Laws, 1984, ch. 457, § 329]

§ 21-11-23. [Codes, 1942, §§ 3374-68, 3374-111; Laws, 1950, ch. 491, §§ 68, 111; Laws, 1952, ch. 375; Laws, 1984, ch. 457, § 329]

Editor's Note — Former § 21-11-1 provided for the qualifications to vote. For similar provisions, see § 23-15-13.

Former § 21-11-3 provided for the registration of voters. For similar provisions, see § 23-15-35.

Former § 21-11-5 provided for primary elections, and specified the time for holding such elections. For similar provisions, see § 23-15-171.

Former § 21-11-7 specified the time for holding general elections. For similar provisions, see § 23-15-173.

Former § 21-11-8 provided for expenses of municipal elections paid for by a municipality.

Former § 21-11-9 provided for elections to fill vacancies in elective offices, and the time for holding such elections. For similar provisions, see § 23-15-857.

Former § 21-11-11 provided for the time for holding special elections. For similar provisions, see § 23-15-859.

Former § 21-11-13 provided for the appointment of election commissioners and election managers, and provided for the determining of results of elections. For similar provisions, see §§ 23-15-211 et seq.

Former § 21-11-15 provided for the marking of ballots. For similar provisions, see § 23-15-551.

Former § 21-11-17 specified the duties of the marshal or police chief. For similar provisions, see § 23-15-257.

Former § 21-11-19 authorized certain municipalities to designate corporate limits as one voting precinct. For similar provisions, see § 23-15-557.

Former § 21-11-21 authorized certain municipalities to designate precincts and establish polling places without regard to precinct lines. For similar provisions, see § 23-15-557.

Former § 21-11-23 provided for the applicability of chapter 11. For similar provisions, see § 23-15-559.

CHAPTER 13

Ordinances

Sec.
21-13-1. Authority to pass; penalties.
21-13-3. How certain actions are to be taken.
21-13-5. Repealed.
21-13-7. Style of ordinances.
21-13-9. Ordinances shall not contain more than one subject; amendments.
21-13-11. Effective date of ordinances; emergency measures.
21-13-13. Ordinance record.
21-13-15. Revision and publication of ordinances.
21-13-17. Clerk may furnish copy of ordinances in judicial proceedings.
21-13-19. Misdemeanors under state penal laws as criminal offenses against municipalities.
21-13-21. Applicability of chapter.

§ 21-13-1. Authority to pass; penalties.

The governing authorities of municipalities shall have the power to pass all ordinances and to enforce the same by a fine not exceeding One Thousand Dollars ($1,000.00) or imprisonment not exceeding ninety (90) days, or both.

SOURCES: Codes, 1892, § 2957; 1906, § 3348; Hemingway's 1917, § 5845; 1930, § 2424; 1942, § 3374-137; Laws, 1950, ch. 491, § 137; Laws, 1964, ch. 497; Laws, 1977, ch. 315; Laws, 1984, ch. 353, § 1, eff from and after July 1, 1984.

Cross References — Ordinances under various forms of government, see §§ 21-3-15 (code-charter); 21-5-9 (commission); and 21-8-13, 21-8-17, and 21-8-47 (mayor-council).

Power of council as to tax rates or bond issuances under council-manager form of government, see § 21-9-57.

Misdemeanors under state law being criminal offenses against municipalities, see § 21-13-19.

Municipalities enacting police regulations, see § 21-19-15.

Municipalities being without power to change Sunday laws, see § 21-19-39.

Penalty for violation of municipal health ordinances, see § 41-3-59.

Authority of municipality or board of supervisors to adopt ordinances relating to individual onsite wastewater disposal systems, see § 41-67-15.

Municipal ordinances and Mississippi Check Cashers Act, see § 75-67-535.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

Judgment upholding the adoption of Mendenhall, Miss., Ord. 244, which closed and vacated a portion of a street, was reversed and the case was remanded with instructions to the City to provide reasons for the ordinance as no reason was given for the adoption of the ordinance and the matter could not be reviewed; while the City had the authority under Miss. Code Ann. § 21-37-7 to close and vacate a street, it had to find the closing was for the public good under Miss. Code. Ann. §§ 21-13-1, 21-13-3 and 21-37-7. Hopkins v. City of Mendenhall, — So. 3d —, 2013 Miss. App. LEXIS 42 (Miss. Ct. App. Jan. 29, 2013).

Municipality may enforce municipal ordinance regarding sale of beer within 1500 feet of church against convenience stores notwithstanding fact that owner of one store has located store on basis of mayor's assurance that location complied with ordinance and that municipality has allowed sale of beer at another convenience store for some 12 years; furthermore renewal of permits for stores to sell beer may be denied on basis of noncompliance with ordinance. Suggs v. Town of Caledonia, 470 So. 2d 1055 (Miss. 1985).

Where a city passed an ordinance making it unlawful for transient vendors to go in and upon private residences, and in and upon private property and buildings other than residences, without first having been requested or invited to do so by the owner or occupant, for the purpose of soliciting orders for the sale of goods or selling the same, the ordinance was valid as it applies to soliciting in private residences but was invalid as to the property and buildings other than residences, which includes primarily business offices and stores. Day v. Klein, 225 Miss. 191, 82 So. 2d 831 (1955).

Presumption prevails in favor of correctness of judgment fixing penalty pursuant to agreement for considering ordinance without production thereof. Mask v. Town of Pontotoc, 152 Miss. 148, 119 So. 156 (1928).

Under a prosecution brought before a mayor of a municipality the affidavit must charge that the offense alleged was committed within the territorial limit of the municipality in order to show venue. McAlister v. City of Moss Point, 96 Miss. 686, 51 So. 403 (1910).

The legislature can constitutionally confer on municipalities the power by ordinances to punish as an offense against the municipality an act which constitutes a crime against the state. Town of Ocean Springs v. Green, 77 Miss. 472, 27 So. 743 (1900).

The court will not take judicial notice of town ordinances; Hence in a prosecution for the violation of an alleged ordinance a conviction will not be sustained if the evidence fails to show its existence. Naul v. State, 70 Miss. 699, 12 So. 903 (1893); Spears v. Town of Osyka, 92 Miss. 790, 46 So. 558 (1908).

2-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

Where the record in a criminal proceeding charging the defendant with the unlawful sale of intoxicating liquors showed a confusion of jurisdiction as to whether the trial magistrate acted as a police justice or as an ex officio justice of the peace, the conviction could not be sustained, since because of such confusion the defendant would not be in a position to make a plea of former conviction or former acquittal against a further prosecution for violation either of the city ordinance or of the state laws. Wright v. City of Belzoni, 188 Miss. 334, 194 So. 919 (1940).

Municipal corporation could not impose penalty of ninety days in jail for violation of ordinances. Bohannan v. City of Louisville, 164 Miss. 97, 144 So. 44 (1932).

The city of Greenville had a charter right to impose a maximum penalty of $25.00 and three months' imprisonment for violating an ordinance requiring a license to operate motor vehicles upon the streets of the city. Wasson v. City of Greenville, 123 Miss. 642, 86 So. 450 (1920).

Where a defendant was convicted of a misdemeanor under a municipal ordinance, that part of the judgment requiring him to stand committed to the county farm until all costs were paid was not authorized. Webb v. City of Vicksburg, 112 Miss. 53, 72 So. 852 (1916).

A fine of $250.00 imposed under a city ordinance was void as to the excess above $100.00, and if such excess amount was paid under duress it may be recovered from the municipality. Town of Belzoni v. Luckett, 109 Miss. 261, 68 So. 171 (1915).

ATTORNEY GENERAL OPINIONS

A municipal ordinance may not restrict the Mississippi Coast Coliseum Commission, a legislatively created political subdivision of the state, in the conduct of its statutory duties. Byrd, Oct. 16, 1991, A.G. Op. #91-0785.

The Mississippi Coast Coliseum, controlled by a legislatively created political subdivision of the state, which is within the corporate limits of the City of Biloxi, and the promoter which would be using the Coliseum's premises during the Easter Arts and Crafts Fair and Show, is not subject to the City of Biloxi's Ordinance banning baby chick giveaways. Byrd, Oct. 16, 1991, A.G. Op. #91-0785.

If mayor's salary is set by ordinance lawfully adopted pursuant to Mississippi Code Annotated Section 21-13-1 et seq. (Revised 1990), any change in that salary must be by amendment of said ordinance in accordance with statutes; if salary in question is set by order or resolution, subsequent order or resolution changing said salary would operate to repeal prior order or resolution. Austin Oct. 6, 1993, A.G. Op. #93-0697.

Leasing or permitting space on municipal light poles for the location of transmitters for wireless internet service is not the granting of a franchise within the meaning of Sections 21-27-1 et seq. or Section 21-13-1(3). A municipality leasing that space would still be required to receive fair value for the lease to ensure it did not result in an unlawful donation, but upon a finding by the governing authorities that it would be in the best interests of the municipality, would not be required to advertise and solicit bids. Hedglin, June 30, 2006, A.G. Op. 06-0242.

§ 21-13-3. How certain actions are to be taken.

(1) The governing authorities of any municipality may provide by ordinance, order or resolution for the appropriation of monies for the operation of the municipal government, which monies shall be paid as provided for in any such ordinance, order or resolution. However, any ordinance granting a franchise or any right to use or occupy the streets, highways, bridges or public places in the municipality for any purpose, except ordinances, resolutions or other actions for the immediate and temporary preservation of the public peace, health or safety, shall be introduced in writing at a regular meeting of the governing body of such municipality and shall thereafter remain on file with the municipal clerk for public inspection for at least two (2) weeks before the final passage or adoption thereof. Upon request of one or more members of the governing authorities, any such ordinance shall be read by the clerk before a vote is taken thereon. In addition, every franchise or grant of any kind to use or occupy the street, highway, bridges, or other public places of such municipality to any interurban or street railway, railroad, gas works, water works, electric light or power plant, heating plant, telephone or telegraph system, or other public utility operating within such municipality must be approved by the passage of the ordinance granting same by a majority of the qualified electors of such municipality voting thereon at a general or special election.

(2) The vote on final passage of all municipal ordinances shall be taken by both "yeas" and "nays", which shall be entered on the minutes by the clerk. A vote shall never be taken on any ordinance not previously reduced to writing. Upon request of one or more members of the municipal governing authorities, any ordinance shall be read by the clerk before a vote is taken thereon.

SOURCES: Codes, Hemingway's 1917, § 6053; 1930, § 2641; 1942, § 3374-73; Laws, 1912, ch. 120; Laws, 1950, ch. 491, § 73; Laws, 1971, ch. 440, § 1; Laws, 1987, ch. 503, § 5, eff from and after July 1, 1987.

Cross References — Limitations on municipality's granting franchise, see § 21-27-1.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2. Reason for closing street required.
3.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

An ordinance under which licenses were granted to operate 10 additional taxicabs was improperly adopted as an emergency measure and declared to be immediately effective where, contrary to statutory requirements, there was no indication of how the immediate preservation of the public health, safety and general welfare of the city's citizens required the ordinance to take effect immediately and where no other good cause was set forth; nor was there compliance with the statute requiring that ordinances granting any right to use the streets remain on file with the municipal clerk for two weeks before passage. Thus, the licenses at issue were a nullity. Yellow Cab Co. of Biloxi, Inc. v. City of Biloxi, 372 So. 2d 1274 (Miss. 1979).

A public utility, part of whose certificated area has been annexed to a city, may continue to serve the annexed area without obtaining a franchise from the city subject to the right of the city to regulate reasonably the manner in which its lines and appliances are constructed and maintained. Capital Elec. Power Ass'n v. Mississippi Power & Light Co., 250 Miss. 514, 150 So. 2d 534 (1963), appeal dismissed, cert. denied, 375 U.S. 77, 84 S. Ct. 196, 11 L. Ed. 2d 142 (1963), reh'g denied, 375 U.S. 981, 84 S. Ct. 478, 11 L. Ed. 2d 428 (1964).

The power given municipalities to grant utility franchises and the right to use their streets and public places are subject to legislative control. Delta Elec. Power Ass'n v. Mississippi Power & Light Co., 250 Miss. 482, 149 So. 2d 504 (1963), appeal dismissed, cert. denied, 375 U.S. 77, 84 S. Ct. 196, 11 L. Ed. 2d 142 (1963), reh'g denied, 375 U.S. 981, 84 S. Ct. 478, 11 L. Ed. 2d 428 (1964).

A nonexclusive franchise of a common carrier for passengers for hire is a valuable property right, and the carrier is entitled to relief by way of an injunction against a threatened or actual injury to his property rights through illegal competition of another common carrier of passengers for hire. Payne v. Jackson City Lines, 220 Miss. 180, 70 So. 2d 520 (1954).

A commercial carrier of passengers for hire in a municipality must obtain a franchise before the carrier can operate for those purposes. Payne v. Jackson City Lines, 220 Miss. 180, 70 So. 2d 520 (1954).

2. Reason for closing street required.

Judgment upholding the adoption of Mendenhall, Miss., Ord. 244, which closed and vacated a portion of a street, was reversed and the case was remanded with instructions to the City to provide reasons for the ordinance as no reason was given for the adoption of the ordinance and the matter could not be reviewed; while the City had the authority under Miss. Code Ann. § 21-37-7 to close and vacate a street, it had to find the closing was for the public good under Miss. Code. Ann. §§ 21-13-1, 21-13-3 and 21-37-7. Hopkins v. City of Mendenhall, — So. 3d —, 2013 Miss. App. LEXIS 42 (Miss. Ct. App. Jan. 29, 2013).

3.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

Where the board of aldermen passed an ordinance granting a power company a franchise, the board acted in its governmental capacity and within the powers conferred by the statute, and the ordinance is therefore not vulnerable to the objection that it is ultra vires, that it was irregularly enacted, or that it is invalid as a usurpation of the prerogatives of successor boards. City of Picayune v. Mississippi Power Co., 197 F.2d 444 (5th Cir. 1952).

The requirement that every contract of a municipality in excess of $500 shall be made or authorized by ordinance, is met where the authorization is in the form of a resolution. Independent Paving Co. v. City of Bay St. Louis, 74 F.2d 961 (5th Cir. 1935).

A resolution, as distinguished from an ordinance, is not subject to the requirement that it be read and considered by sections. New Orleans & N.E.R. Co. v. City of Picayune, 164 Miss. 737, 145 So. 101 (1933).

Sections 55 and 71 of the Constitution apply to acts of the legislature and have no application to municipal ordinances. City of Corinth v. Sharp, 107 Miss. 696, 65 So. 888 (1914).

A municipality may adopt an ordinance on any day except Sunday, although the day may be a holiday. Griffith v. City of Vicksburg, 102 Miss. 1, 58 So. 781 (1912).

Municipal bonds were not invalid because the resolutions, other than the ordinance adjudging that the election had been properly held, were not passed in the manner provided by this section. Kemp v. Town of Hazlehurst, 80 Miss. 443, 31 So. 908 (1902).

Municipal ordinances cannot be avoided by the imputation of bad faith in their passage. State ex rel. Vicksburg v. Washington Steam Fire Co. No. 3, 76 Miss. 449, 24 So. 877 (1899).

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 333 et seq.

8 Am. Jur. Legal Forms 2d, Franchises from Public Entities § 124:42 (ordinance granting franchise).

13C Am. Jur. Legal Forms 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 180:27 (initiative and referendum — procedure).

Law Reviews. 1979 Mississippi Supreme Court Review: Miscellaneous. 50 Miss. L. J. 833, December 1979.

§ 21-13-5. Repealed.

Repealed by Laws, 1987, ch 503, § 6, eff from and after July 1, 1987.

[Codes, 1892, § 3007; 1906, § 3405; Hemingway's 1917, § 5935; 1930, § 2543; 1942, § 3374-71; Laws, 1950, ch. 491, § 71]

Editor's Note — Former § 21-13-5 provided for the passage of ordinances.

§ 21-13-7. Style of ordinances.

The style of all municipal ordinances shall be "Be it ordained by the mayor and board of aldermen (or other proper governing body, as the case may be) of the city (or town or village, as the case may be) of ________,".

SOURCES: Codes, 1892, § 3006; 1906, § 3404; Hemingway's 1917, § 5934; 1930, § 2542; 1942, § 3374-70; Laws, 1950, ch. 491, § 70, eff from and after July 1, 1950.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

Municipalities have only such authority to adopt ordinances as is granted them by the State; and in every power given municipality to pass bylaws or ordinances there is an implied restriction that the ordinances shall be reasonable, consistent with the general law, and not destructive of a lawful business. King v. City of Louisville, 207 Miss. 612, 42 So. 2d 813 (1949).

2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

Where an ordinance granting power company 25-year franchise was enacted on May 13, 1947, and reciting that it should take effect immediately because public interests so demanded, it became effective immediately on May 13, 1947, and under the then applicable statutes it would have been effective within thirty days after its enactment. City of Picayune v. Mississippi Power Co., 197 F.2d 444 (5th Cir. 1952).

Ordinance is enacted to regulate continuing conditions and constitutes permanent rule of government, generally continuing to operate until formally repealed; while resolution is merely declaratory of will of corporation in given matter and in nature of ministerial act. City of Natchez v. Henderson, 207 Miss. 14, 41 So. 2d 41 (1949).

Improvement resolution need not conform to statutory style governing ordinances as to title and numbering of sections. New Orleans & N.E.R. Co. v. City of Picayune, 164 Miss. 737, 145 So. 101 (1933).

Where the charter of a municipality does not require the publication of an ordinance, it need not be published. City of Corinth v. Sharp, 107 Miss. 696, 65 So. 888 (1914).

The bonds of a municipality issued under the provisions of this chapter are not invalid because (a) the resolutions, other than an ordinance adjudging that the election had been properly held resulting in favor of the issuance of the municipal authorities, providing for their issuance do not conform to the provisions of this section requiring the style of all ordinances to be “Be it ordained, etc.” nor because (b) the resolutions, other than the one declaring an intention to issue the bonds, were not published as ordinances are required to be published by this section, a notice of the election having been duly given by election commissioners. Kemp v. Town of Hazlehurst, 80 Miss. 443, 31 So. 908 (1902).

RESEARCH REFERENCES

ALR. Right of labor union or other organization for protection or promotion of interests of members, to challenge validity of statute or ordinance on behalf of members. 2 A.L.R.2d 917.

Conclusiveness of declaration of emergency in ordinance. 35 A.L.R.2d 586.

Am Jur. 13C Am. Jur. Legal Forms 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 180:41 (general form of ordinance).

13C Am. Jur. Legal Forms 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 180:42 (amendment to existing ordinance).

13C Am. Jur. Legal Forms 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 180:101 (general repealer of conflicting ordinances).

13C Am. Jur. Legal Forms 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 180:102 (specific repealer of conflicting ordinances).

§ 21-13-9. Ordinances shall not contain more than one subject; amendments.

An ordinance shall not contain more than one (1) subject, which shall be clearly expressed in its title. An ordinance shall be amended by section or sections, and the original section or sections shall thereby be repealed. Each amendment to a section or sections of an ordinance shall have a title which clearly indicates the subject matter or matters of the amendment.

SOURCES: Codes, 1892, § 3008; 1906, § 3406; Hemingway's 1917, § 5936; 1930, § 2544; 1942, § 3374-74; Laws, 1950, ch. 491, § 74; Laws, 1982, ch. 372, § 1, eff from and after passage (approved March 22, 1982).

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2. Scope restricted to one subject.
3. Title to reflect subject.

4.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

City of Vicksburg Ordinance 93-37, entitled "Ordinance Establishing Zoning Regulations For Adult Entertainment Businesses Thereby Amending The Zoning Ordinance of the City of Vicksburg, Establishing Licensing Provisions and Other Regulations," did not violate § 21-13-9, which provides that ordinances cannot contain more than one subject and that such subject must be clearly expressed in the title of the ordinance. Steverson v. City of Vicksburg, 900 F. Supp. 1 (S.D. Miss. 1994).

Where owners of land divided it into lots and streets and filed plat with chancery clerk, attempted acceptance of dedication by mayor and board of aldermen of town of New Hebron by ordinance without proper title was void. Maxwell v. Town of New Hebron, 176 So. 127 (Miss. 1937).

Statute providing that ordinance shall contain only one subject which shall be clearly expressed in title is mandatory. Home Ins. Co. v. Dahmer, 167 Miss. 893, 150 So. 650 (1933).

Definition of a preamble to an ordinance. Dean v. Town of Senatobia, 142 Miss. 815, 108 So. 178 (1926).

An ordinance must have a title or it will be invalid. Sample v. Town of Verona, 94 Miss. 264, 48 So. 2 (1909).

2. Scope restricted to one subject.

A zoning ordinance which established six use classifications and placed various areas within the city in one or the other of these classifications, and, at the same time, rezoned a particular area into a new classification was not void under the provisions of this section [Code 1942, § 3374-74], for containing two subject matters; for the proper method of enacting a zoning ordinance not only requires the municipal authorities to designate the classifications felt to be necessary, but the area affected by the classification should also be described in the ordinance. Blacklidge v. City of Gulfport, 223 So. 2d 530 (Miss. 1969).

Notwithstanding the mandatory requirement of this section [Code 1942, § 3374-74] that an ordinance shall not contain more than one subject, a city seeking to alter its boundaries by adding certain adjacent territory and excluding certain territory already included within the existing limits is not required to adopt two different ordinances, and thus initiate at the same time two different proceedings in a chancery court. Dodd v. City of Jackson, 238 Miss. 372, 118 So. 2d 319 (1960).

An ordinance may provide that all offenses constituting misdemeanors against the state shall be violations of the ordinance and this is not violative of the ordinance and this is violative of this section forbidding more than one subject to be contained in an ordinance. Richards v. Town of Magnolia, 100 Miss. 249, 56 So. 386 (1911).

3. Title to reflect subject.

The omission from the title of an annexation ordinance of the city's promises as to the improvements and services to be rendered in the territory proposed to be annexed did not render the ordinance void. Dodd v. City of Jackson, 238 Miss. 372, 118 So. 2d 319 (1960).

An ordinance, by which a city sought to alter its boundaries by adding certain adjacent territory and excluding certain territory already included within the existing limits was sufficiently expressed in the title reading "an ordinance to enlarge, extend, modify and define the corporate limits and boundaries" of the city. Dodd v. City of Jackson, 238 Miss. 372, 118 So. 2d 319 (1960).

This section [Code 1942, § 3374-74] requires that the title so express the subject of the ordinance that the lawmakers and the people may not be left in doubt as to matters treated. Home Ins. Co. v. Dahmer, 167 Miss. 893, 150 So. 650 (1933).

Ordinance establishing fire limits and relating to construction of buildings therein held void for insufficiency of title, where title referred to use of fire protection equipment. Home Ins. Co. v. Dahmer, 167 Miss. 893, 150 So. 650 (1933).

4.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

Improvement resolution need not conform to statutory style governing ordinances as to title and numbering of sections. New Orleans & N.E.R. Co. v. City of Picayune, 164 Miss. 737, 145 So. 101 (1933).

An ordinance of the municipality entitled "An ordinance to prohibit the carrying of deadly weapons," and which in its body makes it an offense against the municipality to carry concealed or exhibit in an angry or rude manner, is not void under this section providing that an ordinance shall not contain more than one subject to be clearly expressed in its title. Kemp v. Town of Hazlehurst, 80 Miss. 443, 31 So. 908 (1902).

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties and Other Political Subdivisions § 394 et seq.

CJS. 62 C.J.S., Municipal Corporations §§ 365-367.

§ 21-13-11. Effective date of ordinances; emergency measures.

Every ordinance passed by the governing body of a municipality, except as is otherwise provided by law, shall be certified by a municipal clerk, signed by the mayor or a majority of all the members of the governing body, recorded in the ordinance book, and published at least one (1) time in some newspaper published in such municipality, or, if there be no such newspaper, then in a newspaper within the county having general circulation in said municipality, or, if there be no newspaper published in or having general circulation in same, then in any newspaper published in the State of Mississippi having general circulation in said county; and all of same shall be done before such ordinance shall be effective. The publication of the ordinance may be made as provided in Section 21-17-19. No ordinance shall be in force for one (1) month after its passage; however, any ordinance for the immediate and temporary preservation of the public peace, health or safety or for other good cause, which is adopted by unanimous vote of all members of the governing body, may be made effective from and after its passage by a unanimous vote of all members of the governing body. However, in such cases, such ordinance shall contain a statement of reason why it is necessary that same become immediately effective. All such ordinances shall be published and recorded in the ordinance book in the same manner as other ordinances, but shall become effective immediately upon the adoption thereof, and prior to being so recorded and published. Nothing in this section shall apply to ordinances appropriating money for the payment of the current expenses of the municipality or the payment of sums due on any contract previously made.

SOURCES: Codes, 1892, § 3006; 1906, § 3404; Hemingway's 1917, §§ 5934, 6054; 1930, §§ 2542, 2642; 1942, § 3374-72; Laws, 1912, ch. 120; Laws, 1950, ch. 491, § 72; Laws, 1966, ch. 590, § 1; Laws, 1972, ch. 331, § 1; Laws, 1988, ch. 457, § 2, eff from and after December 8, 1988 (the date the United States Attorney General interposed no objection to the amendment).

Cross References — Revision and publication of ordinances, see § 21-13-15.

Contracting with newspapers for publication of legal notices, see § 21-39-3.

Method of publishing notice of special improvement, see § 21-41-51.

Inapplicability of publishing fee schedule to publication of municipal ordinances, see § 25-7-65.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

A bill of exceptions filed on June 13, 1980, to challenge a rezoning of certain property was not untimely where, although the Mayor and Board of Aldermen voted on May 6, 1980, to reclassify the property, the rezoning ordinance did not become effective until written, signed and formally adopted on June 3, 1980, at which time the ten-day appeal period commenced to run. City of Oxford v. Inman, 405 So. 2d 111 (Miss. 1981).

In an action by a city to permanently enjoin a landowner from operating a motor repair business in an area zoned as a single-family residential district, the trial court properly denied the requested relief, even though the zoning ordinance was adopted almost one year before defendant moved his business to the location at issue, where the ordinance did not take effect until its publication more than six years later; nor did the ordinance take effect immediately as an emergency measure where it merely contained a general statement that its immediate implementation was necessary for the preservation of the public peace, health and safety, without stating the facts constituting the emergency that was declared to exist. Thus, at the time the ordinance took effect, defendant's business was a preexisting nonconforming use not prohibited thereby. City of Carthage v. Walters, 375 So. 2d 228 (Miss. 1979).

An annexation ordinance attached to a bill of complaint seeking to annex property was invalid where the exhibit did not show that it had been signed by the mayor or by a majority of the members of the governing body of a municipality, and the signatures or facsimilies thereof appeared nowhere upon the exhibit. City of Biloxi v. Cawley, 264 So. 2d 888 (Miss. 1972).

The absence of certification by the city clerk does not render publication of an ordinance inoperative to put it into effect. In re City of Hazlehurst, 247 Miss. 527, 153 So. 2d 809 (1963).

2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

Prior to July 1950, city operating under the aldermanic form of government was not subject to statutory requirements which provided that ordinances be unanimously passed, that they remain on file for public inspection prior to passage or that they be ratified by popular vote. City of Picayune v. Mississippi Power Co., 197 F.2d 444 (5th Cir. 1952).

When an ordinance granting power company 25-year franchise was enacted on May 13, 1947, and reciting that it should take effect immediately because public interests so demanded, it became effective immediately on May 13, 1947, and under the then applicable statutes it would have been effective within thirty days after its enactment. City of Picayune v. Mississippi Power Co., 197 F.2d 444 (5th Cir. 1952).

As used in this statute, the word "resolution" takes on the nature of an "ordinance" which is enacted to regulate continuing conditions and constitutes a permanent rule of government, as distinct from an "order" which deals with temporary powers and ceases to have further potentiality after accomplishment of its purpose. Evans v. City of Jackson, 202 Miss. 9, 30 So. 2d 315 (1947).

Publication of a "resolution or ordinance," as required by this section, does not apply to an "order or resolution" adopted for the sale of unredeemed tax forfeited lands. Evans v. City of Jackson, 202 Miss. 9, 30 So. 2d 315 (1947).

Attempt to make ordinance effective prior to its passage did not render ordinance void, but merely rendered it unenforceable until lapse of one month after its passage. Streckfus Steamers v. Kiersky, 174 Miss. 125, 163 So. 830 (1935).

Failure of ordinance to assign cause for immediate enforcement thereof caused it to become effective not earlier than one month after its passage. Streckfus Steamers v. Kiersky, 174 Miss. 125, 163 So. 830 (1935).

Where city charter made specific provision for adoption of ordinance without formal approval of mayor, mayor's formal approval of ordinance held unnecessary, since statute providing for adoption of ordinances by municipalities under common statutory charter was inapplicable. Streckfus Steamers v. Kiersky, 174 Miss. 125, 163 So. 830 (1935).

ATTORNEY GENERAL OPINIONS

Ordinance or revised ordinance must meet publication requirements of Mississippi Code Annotated Section 21-13-11 prior to being effective. Schissel, Feb. 9, 1994, A.G. Op. #94-0032.

A person employed by the Department of Corrections may continue to serve in elected office as a city alderman as long as he waives all salary and compensation for office and elects to receive a retirement allowance in lieu thereof; such a person may also continue to serve as a city alderman, retire from the Department of Corrections, and begin to receive a retirement allowance without the required forty-five day separation period as long as he elects and waives as required. Touchton, January 20, 1998, A.G. Op. #97-0753.

A municipality may publish the substance of a zoning ordinance, i.e., an explanatory statement summarizing the full text of the ordinance, in which the chief purpose is explained in clear and unambiguous language; in such case, the clerk must post a copy of the full text of the zoning ordinance, along with the maps, charts, diagrams and sketches, at the city hall, main public library or courthouse, and at another public place in the municipality; further, the publication should also specify when and where the full text of the ordinance and any maps are available for review. Donald, August 5, 1999, A.G. Op. #99-0390.

Governing authorities should publish an amended zoning ordinance in accordance with statutory procedures, since any zoning ordinance will not be legally effective until it is published; if the governing authorities decide to consider amending an ordinance legally adopted to change a zoning classification, they must follow the statutory procedures to amend the ordinance. Mantel, March 24, 2000, A.G. Op. #2000-0146.

Where a county is amending its zoning ordinance, but the proposed amendments do not change any actual existing zoning of property in the county, the portions that are being amended and the proposed amendments may be published in lieu of publishing the entire ordinance, and the publication should refer to the full text of the proposed amendments on file in the city clerk's office. Evans, Oct. 20, 2000, A.G. Op. #2000-0584.

Where there is no newspaper located in or published in a town, a newspaper within the county having general circulation in the municipality (or if there is none, a newspaper having general circulation within the county) must be used for publication of an ordinance to change the date of board meetings, as is required for the publication of all other ordinances of the municipality pursuant to Section 21-13-11. Thomas, May 30, 2003, A.G. Op. 03-0268.

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties and Other Political Subdivisions §§ 338, 340, 341.

13C Am. Jur. Legal Forms 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 180:43 (certification of posting and publication of ordinance).

13C Am. Jur. Legal Forms 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 180:43 (declaration of emergency).

13C Am. Jur. Legal Forms 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 180:104 (effective date of ordinance).

13C Am. Jur. Legal Forms 2d (Rev), Municipal Corporations, Counties, and Other Political Subdivisions § 180:105 (effective date of ordinance-declaration of emergency).

18A Am. Jur. Pl & Pr Forms (Rev), Notice, Form 1 (notice, general form).

18A Am. Jur. Pl & Pr Forms (Rev), Notice, Forms 24, 25 (affidavit of notice by posting or publication).

Law Reviews. 1979 Mississippi Supreme Court Review: Miscellaneous. 50 Miss. L. J. 833, December 1979.

§ 21-13-13. Ordinance record.

The municipal clerk shall keep a record of permanent construction, to be entitled "Ordinances of the City, Town or Village of ________," in which he shall enter at length, in cases where same have not already been entered, every ordinance in force, and every ordinance hereafter enacted immediately after its passage. Such ordinances shall be entered in typewriting, or in a plain and distinct handwriting, and the clerk shall append to each ordinance a note stating the date of its passage, and shall cite therein the record and page of the minutes containing the record of its passage. All ordinances which have been previously passed by any municipality which are not so entered in the ordinance record, and all ordinances hereafter passed which are not entered in the ordinance record, shall be void and of no effect. The ordinances which are to be recorded in such ordinance record are those which are in their nature laws of the municipality, and are not mere resolutions, orders or decrees of a temporary nature. It shall be the duty of the municipal clerk to keep the ordinance record indexed alphabetically.

SOURCES: Codes, 1892, § 3009; 1906, § 3407; Hemingway's 1917, § 5937; 1930, § 2545; 1942, § 3374-75; Laws, 1950, chs. 507, 491, § 75; Laws, 1966, ch. 591, § 1; Laws, 1995, ch. 447, § 1, eff from and after July 1, 1995.

Cross References — Municipal clerk's duty to keep minute book and municipal seal, see § 21-15-17.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2. Effect of noncompliance.
3. Presumptions and evidence.

4.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

This section [Code 1942, § 3374-75] providing for the record of ordinances in an ordinance book relates to measures which are "in their nature laws of the municipality," and not to "mere orders or decrees temporary in their nature." Rich v. McLauren, 83 Miss. 95, 35 So. 337 (1903) but see Edwards v. Weeks, 633 So. 2d 1035 (Miss. 1994).

An annexation order, which is ineffective until it is approved by the court, is not required to be recorded in a city's ordinance book until final approval of it by the court. Nowlin v. City of Pearl, 365 So. 2d 952 (Miss. 1978), cert. denied, 441 U.S. 946, 99 S. Ct. 2167, 60 L. Ed. 2d 1049 (1979).

The statutes make it essential to the validity of a municipal ordinance that the minutes of the mayor and board of aldermen for the period of its enactment be signed by the mayor and attested by the city clerk. Ballard v. Smith, 234 Miss. 531, 107 So. 2d 580, 75 A.L.R.2d 152 (1958).

2. Effect of noncompliance.

1953 zoning ordinances enacted by the city of Tupelo were invalid where the minutes of the mayor and board of aldermen for the period in which the ordinance was enacted were not signed by the mayor and attested by the city clerk. Ballard v. Smith, 234 Miss. 531, 107 So. 2d 580, 75 A.L.R.2d 152 (1958).

The requirement hereunder that the municipal clerk append to the ordinance "a note stating the date of its passage, and cite therein the book and page of the minutes containing the record of its passage," is merely directory and for convenience in finding the ordinance in the minutes of the city's governing body, and a failure to comply therewith has no effect on the ordinance or on the copy thereof in the ordinance book. Jimmerson v. City of Oxford, 190 Miss. 884, 2 So. 2d 152 (1941).

3. Presumptions and evidence.

An ordinance found in a book identified as the ordinance book of the municipality and in which all ordinances are kept and recorded in the absence of proof to the contrary is presumed to be a valid ordinance. Bugg v. Town of Houlka, 122 Miss. 400, 84 So. 387, 9 A.L.R. 480 (1920).

A clerk authorized under the charter to register the proceedings and ordinances of the municipality is presumed to have done so and an ordinance found registered in the proper book by such clerk is presumed to be valid, where entry in the book clearly shows its adoption. City of Corinth v. Sharp, 107 Miss. 696, 65 So. 888 (1914).

4.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

A printed proof of the publication of a municipal ordinance setting forth the ordinance at length and the date of its passage securely pasted to one of the pages of the municipal ordinance book will satisfy the requirements of this section, so that it is not error to admit in evidence the ordinance book in which such ordinance appeared in a prosecution for possession of intoxicating liquor in violation of the ordinance in question. Jimmerson v. City of Oxford, 190 Miss. 884, 2 So. 2d 152 (1941).

This section is directed to the clerk with reference to transcribing ordinances in the ordinance book, and the clerk's failure to transcribe an ordinance does not invalidate the ordinance. City of Greenwood v. Jones, 91 Miss. 728, 46 So. 161 (1908).

RESEARCH REFERENCES

Law Reviews. 1978 Mississippi Supreme Court Review: Administrative Law. 50 Miss. L. J. 11, March 1979.

§ 21-13-15. Revision and publication of ordinances.

The municipality may from time to time authorize the revision and codification of the ordinances, and their publication in pamphlet or book form. When so revised, arranged, classified and codified, said book or pamphlet may be adopted by ordinance as the official code of ordinances of the municipality without compliance with the requirements pertaining to the passage of ordinances. Such official code of ordinances may be amended by section or sections in the manner provided in this chapter. The municipality may cause to be published in connection therewith the laws relating to municipalities, with such annotations of supreme court decisions thereon as may be proper, and such forms and instructions as it shall deem advisable. The whole may be preceded by a historical sketch of the municipality.

SOURCES: Codes, 1892, § 3010; 1906, § 3408; Hemingway's 1917, § 5938; 1930, § 2546; 1942, § 3374-76; Laws, 1922, ch. 236; Laws, 1950, ch. 491, § 76; Laws, 1982, ch. 372, § 2, eff from and after passage (approved March 22, 1982).

Cross References — Contracting with newspapers for publication of legal notices, see § 21-39-3.

§ 21-13-17. Clerk may furnish copy of ordinances in judicial proceedings.

Whenever in any judicial proceeding it shall be necessary to prove the existence of any municipal ordinance, a copy of such ordinance, certified to by the clerk of the municipality, or the ordinance book in which such ordinance is entered, may be introduced in evidence, and shall be prima facie evidence of the existence of such ordinance and that the same was adopted and published in the manner provided by law.

SOURCES: Codes, 1906, § 3409; Hemingway's 1917, § 5939; 1930, § 2547; 1942, § 3374-77; Laws, 1950, ch. 491, § 77, eff from and after July 1, 1950.

Cross References — Custodians of books and other records certifying copies admissible in evidence, see § 13-1-77.

JUDICIAL DECISIONS

1. In general.
2. Presumptions.
3. Waiver.

1. In general.

Municipal ordinances, to be admissible in evidence, must be verified by certificate of the clerk and by seal of the municipality. In re City of Hazlehurst, 247 Miss. 527, 153 So. 2d 809 (1963).

In suit to recover privilege tax imposed by ordinance, where certified copies of ordinances, and city ordinance books in which they were entered, were introduced in evidence, ordinances held sufficiently proved. Streckfus Steamers v. Kiersky, 174 Miss. 125, 163 So. 830 (1935).

In prosecution for violating ordinance, ordinance, to be admissible, must be verified by certificate of clerk and by seal of town. Dennis v. Town of Walnut Grove, 157 Miss. 797, 128 So. 557 (1930).

A court does not take judicial notice of municipal ordinances and they must be introduced in evidence or their existence proven. Watkins v. City of Brookhaven, 134 Miss. 556, 99 So. 363 (1924).

2. Presumptions.

Presumption prevails in favor of correctness of judgment fixing penalty pursuant to agreement for considering ordinance without production thereof. Mask v. Town of Pontotoc, 152 Miss. 148, 119 So. 156 (1928).

The presumption is that an ordinance was passed at a meeting held at the proper time and place when there is no evidence to the contrary. City of Greenwood v. Jones, 91 Miss. 728, 46 So. 161 (1908).

3. Waiver.

Parties who in a prosecution for violating a city ordinance agree before entering the trial that the city has a valid ordinance covering the offense charged the defendant cannot afterwards on a motion in arrest of judgment show that the ordinance is void. Lee v. City of Oxford, 134 Miss. 647, 99 So. 509 (1924).

Where an ordinance is offered as evidence in a criminal trial without objection, it is too late to make the objection for the first time in the Supreme Court; failure to object in the court below was a waiver of the obligation on the town to make proof thereof. Morris v. Town of Greenwood, 73 Miss. 430, 19 So. 105 (1895).

RESEARCH REFERENCES

Practice References. Young, Trial Handbook for Mississippi Lawyers §§ 19:19, 22:11.

§ 21-13-19. Misdemeanors under state penal laws as criminal offenses against municipalities.

All offenses under the penal laws of this state which are misdemeanors, together with the penalty provided for violation thereof, are hereby made, without further action of the municipal authorities, criminal offenses against the municipality in whose corporate limits the offenses may have been committed to the same effect as though such offenses were made offenses against the municipality by separate ordinance in each case. However, for such misdemeanor, any penalty of incarceration is hereby limited to no more than six (6) months in jail, and any fine is hereby limited to a maximum of One Thousand Dollars ($1,000.00) for each such violation in any case tried without a jury. Judgments for fines, costs, forfeitures and other penalties imposed by municipal courts may be enrolled by filing a certified copy of the record with the clerk of any circuit court and execution may be had thereon as provided by law for other judgments.

SOURCES: Codes, 1906, § 3410; Hemingway's 1917, § 5940; 1930, § 2549; 1942, § 3374-78; Laws, 1950, ch. 491, § 78; Laws, 1979, ch. 401, § 13; Laws, 1984, ch. 353, § 2, eff from and after July 1, 1984.

Cross References — Sentencing powers of municipal courts, see § 21-23-7.

Duty of police to arrest person violating bird and animal preserves, see § 49-5-43.

What constitutes various crimes and misdemeanors, see §§ 97-1-1 et seq.

Procedure in criminal cases generally, see §§ 99-11-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-10. [Reserved for future use.]

II. Under Former Law.

11. In general.
12. Construction and application.
13. Adoption of state law by municipality.
14. —Limitation on power of municipality.
15. —Prospective or retrospective operation.
16. Particular offenses.

I. Under Current Law.

1. In general.

Section 21-13-19, which gives a municipal court the authority to try misdemeanors and allows municipalities to incorporate all state misdemeanors as municipal violations, does not bar the State from prosecuting misdemeanors committed within municipal boundaries; the effect of § 21-13-19 is to allow more than one governmental entity to prosecute misdemeanors, as the statute simply grants municipalities the authority to make use of the legislature's classifications of misdemeanors; thus, a county circuit court had original jurisdiction over a prosecution for malicious mischief under § 97-17-67 in spite of the defendant's argument that his violation constituted a municipal offense and that the case should have been heard by a municipal court. Collins v. State, 594 So. 2d 29 (Miss. 1992).

In a prosecution for driving under the influence, enhanced 9-month sentences received by the defendants after they sought a trial de novo in the circuit court were not improper, even though the defendants were originally tried and sentenced in municipal court under § 21-13-19, which provides for a maximum penalty of 6 months' incarceration; when the defendants filed their appeals for trial de novo in the circuit court, they took the chance that the penalties would be greater than allowed by § 21-13-19, since the actions were brought under § 63-11-30(1)(c). Fisher v. City of Eupora, 587 So. 2d 878 (Miss. 1991).

This statute [Code 1942, § 3374-78] makes self-executing, and applicable in a municipality, misdemeanor statutes of the state. Walton v. City of Tupelo, 241 Miss. 894, 133 So. 2d 531 (1961).

In prosecution for unlawfully exhibiting a deadly weapon, it was not necessary for the city to introduce into evidence a certified copy of the city ordinance making all offenses under the penal laws of this state which are misdemeanors, criminal offenses against the city within whose corporate limits the offense was committed. Sykes v. City of Crystal Springs, 216 Miss. 18, 61 So. 2d 387 (1952).

By virtue of this statute [Code 1942, § 3374-78] it is not necessary that the ordinance of a town declaring all offenses under the Penal Laws of the state amounting to a misdemeanor offenses against the municipality be introduced in evidence in a prosecution for unlawful possession of intoxicating liquor; moreover, testimony of the municipal clerk and the mayor was sufficient to identify the ordinance of the town and to make it a part of the record in the trial. Simmons v. Town of Louin, 213 Miss. 482, 57 So. 2d 133 (1952).

2.-10. [Reserved for future use.]

II. Under Former Law.

11. In general.

Section is not in conflict with section in this chapter prohibiting an ordinance from containing more than one subject. Richards v. Town of Magnolia, 100 Miss. 249, 56 So. 386 (1911).

Section providing that all offenses made misdemeanors under the state laws may be by ordinance declared violations of municipal laws, is not violative of section requiring that an ordinance shall not contain more than one subject. Winfield v. City of Jackson, 89 Miss. 272, 42 So. 183 (1906).

12. Construction and application.

Statute stating that the maximum penalty for each violation in any case tried without a jury was incarceration limited to no more than six months in jail, and any fine also imposed was limited to a certain amount, was not relevant to the municipal court's jurisdiction, and thus, defendant was not entitled to reversal of his simple domestic violence conviction. Murrell v. City of Indianola, 858 So. 2d 183 (Miss. Ct. App. 2003).

Section authorizes the enactment of a blanket ordinance making misdemeanors only offenses against a city when committed within the territorial limits of the city. Watkins v. City of Brookhaven, 134 Miss. 556, 99 So. 363 (1924).

An ordinance under section which provides for a maximum penalty of $100.00 or imprisonment in jail not to exceed one year or both is void as undertaking to impose a penalty which in some cases would be in excess of the penalty provided by the state laws for the same offense. Cook v. City of Pascagoula, 121 Miss. 5, 83 So. 305 (1919).

13. Adoption of state law by municipality.

By virtue of section, a city may validly enact an ordinance adopting provisions of state law (§ 8176) pertaining to lawful rates of speed, and state law (§ 8275) making violation of latter section a misdemeanor. White v. City of Philadelphia, 197 Miss. 166, 19 So. 2d 493 (1944), error overruled, 197 Miss. 178, 19 So. 2d 744 (1944).

The city of Pascagoula operates under the code chapter on municipalities, and it has a general ordinance making all misdemeanors, which are such under state statutes, offenses also against the city. City of Pascagoula v. Nolan, 183 Miss. 164, 184 So. 165 (1938).

Whether words "all you ladies that smoke cigarettes throw your butts in here" painted on the hood of an automobile left in a public place violated an ordinance making all misdemeanors, which are such under state statutes, offenses also against the city, was a question for the jury. City of Pascagoula v. Nolan, 183 Miss. 164, 184 So. 165 (1938).

Ordinance making all offenses amounting to misdemeanors under state laws offenses against municipality when committed within its limits includes offenses which legislature may subsequently declare misdemeanors. City of Lumberton v. Frederick, 165 Miss. 456, 143 So. 488 (1932).

14. —Limitation on power of municipality.

A municipality cannot pass a criminal ordinance on a subject more severe or comprehensive than the state statute dealing with that subject. City of Amory v. Yielding, 203 Miss. 265, 34 So. 2d 726 (1948).

All ordinances under this section must be restricted to misdemeanors as defined by the state laws and if made to embrace felonies will be void. City of Oxford v. Buford, 134 Miss. 635, 99 So. 498 (1924).

Such an ordinance must be restricted in its application to misdemeanors against the state, for an ordinance which provides that all crimes under the chapter on crimes and misdemeanors, which embraces felonies as well as misdemeanors is void. Dismukes v. Town of Louisville, 101 Miss. 104, 57 So. 547 (1912).

But notwithstanding the title of the ordinance appears to embrace all violations of the penal laws of the state of

Mississippi, the ordinance itself is not invalid where it deals only with offenses amounting to misdemeanors. Richards v. Town of Magnolia, 100 Miss. 249, 56 So. 386 (1911).

Such an ordinance must also be restricted to misdemeanors committed within the corporate limits of the municipality to which the ordinance applies. Smothers v. City of Jackson, 92 Miss. 327, 45 So. 982 (1908).

15. —Prospective or retrospective operation.

Ordinance seeking to make all misdemeanors against State offenses against town in whose corporate limits offenses "may have been committed" held not void as to one subsequently arrested on theory that it referred only to past acts, since language of ordinance follows language of statute authorizing municipalities to adopt misdemeanors under State law as offenses against municipalities. Basham v. Town of Sebastopol, 172 Miss. 194, 159 So. 847 (1935).

Ordinance making misdemeanor under state law violations of town ordinances when committed within corporate limits was prospective in its operation. Lindsey v. City of Louisville, 156 Miss. 66, 125 So. 558 (1930).

An ordinance providing that all offenses constituting misdemeanors against the state shall be violations of the ordinance would not only make all acts that are misdemeanors under the law then existing violations of the ordinance but would apply to all laws thereafter passed by the state defining misdemeanors. Smothers v. City of Jackson, 92 Miss. 327, 45 So. 982 (1908).

16. Particular offenses.

Affidavit that defendant wilfully and unlawfully drove automobile over public street or highway in city at rate of more than fifty-five miles per hour, contrary to laws and ordinances of city, sufficiently charges offense of violating ordinance adopting provisions of statute (§ 8176), regulating spe ed of motor vehicles. White v. City of Philadelphia, 197 Miss. 166, 19 So. 2d 493 (1944), error overruled, 197 Miss. 178, 19 So. 2d 744 (1944).

Evidence that defendant was driving at greater speed than that prescribed by this section, or by city ordinances adopting provisions thereof, establishes defendant's guilt beyond a reasonable doubt, where defendant fails to offer any evidence in justification thereof. White v. City of Philadelphia, 197 Miss. 166, 19 So. 2d 493 (1944), error overruled, 197 Miss. 178, 19 So. 2d 744 (1944).

Instruction authorizing jury to find defendant guilty of violating city ordinance adopting provisions of § 8176, if jury believed from the evidence beyond reasonable doubt that defendant unlawfully drove automobile on city street more than 55 miles per hour, was proper, where defendant made no attempt to overcome prima facie case. White v. City of Philadelphia, 197 Miss. 166, 19 So. 2d 493 (1944), error overruled, 197 Miss. 178, 19 So. 2d 744 (1944).

Traveler carrying concealed weapon ten miles from home, and who was unacquainted with people living between home and place to which he was traveling, and who was carrying weapon for purpose of protection, held not guilty of offense of carrying concealed weapon. Basham v. Town of Sebastopol, 172 Miss. 194, 159 So. 847 (1935).

ATTORNEY GENERAL OPINIONS

All state law violations are automatically violations of municipal ordinance under Miss. Code Section 21-13-19. Carroll, Mar. 31, 1993, A.G. Op. #93-0165.

Miss. Code Section 21-13-19 provides that all obscene phone call offenses that are misdemeanors under state law are automatically criminal offenses against municipality over which municipal court would have jurisdiction under Miss. Code Section 21-23-7; such violations may also be prosecuted in municipal courts. Gentry, June 7, 1993, A.G. Op. #93-0362.

Pursuant to Miss. Code Section 21-13-19, state misdemeanors are violations of municipal ordinance when committed within municipality; punishment for violation of state law misdemeanors is limited to six months in jail and $1000. Evans, June 9, 1993, A.G. Op. #93-0296.

Under Miss. Code Section 21-13-19, it is violation of municipal ordinance to commit simple assault within boundaries of municipality; as violator of municipal ordinance, offender is municipal prisoner and, in absence of agreement between city and county as to housing of prisoners, should be housed in municipal jail. Evans, June 9, 1993, A.G. Op. #93-0296.

A municipal court has jurisdiction to hear and decide, without a jury, an alleged violation of Miss. Code Ann. § 97-5-39(1)(a), and to punish offenders as prescribed by law. The penalty for state misdemeanors tried in a municipal court is limited to six months incarceration and/or a $1,000 fine pursuant to Miss Code Ann. § 21-13-19. Boutwell, March 16, 2007, A.G. Op. #07-00124, 2007 Miss. AG LEXIS 113.

RESEARCH REFERENCES

Law Reviews. 1979 Mississippi Supreme Court Review: Civil Procedure. 50 Miss. L. J. 719, December 1979.

§ 21-13-21. Applicability of chapter.

The provisions of this chapter shall apply to all municipalities of this state, whether operating under the code charter, a special charter, commission form, or other form of government.

SOURCES: Codes, 1942, § 3374-81; Laws, 1950, ch. 491, § 81, eff from and after July 1, 1950.

Cross References — Various forms of municipal government, see §§ 21-3-1 et seq. (code charter); 21-5-1 et seq. (commission); 21-7-1 et seq. (council); 21-8-1 et seq. (mayor-council); and 21-9-1 et seq. (council-manager).

CHAPTER 15

Officers and Records

Sec.
21-15-1. Term of elected municipal officers.
21-15-2. Municipalities prohibited from imposing additional requirements on elected officials.
21-15-3. Election of officers by governing authorities.
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21-15-6. Purchase of general liability insurance coverage.
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21-15-9. Mayor to enforce laws and ordinances.
21-15-11. Mayor to demand exhibit of accounts.
21-15-13. Mayor may call in aid.
21-15-15. Power of mayor to remit and vacate fines, penalties and forfeitures.
21-15-17. Municipal clerk; duty to keep minute record and municipal seal.
21-15-19. Municipal clerk; duties as to dockets records.
21-15-21. Municipal clerk to serve as auditor.
21-15-23. Deputy clerk; oath of office; surety bond.
21-15-25. Municipal attorney; appointment and compensation.
21-15-27. Employment of firm of attorneys.
21-15-29. Repealed.
21-15-31. Compensation of building inspector.
21-15-33. Municipal minutes.
21-15-35. Preservation of essential public records of municipal governments.
21-15-37. Reproduction of municipal records; destruction of originals.
21-15-38. Surety bond.
21-15-39. Applicability of particular sections.

§ 21-15-1. Term of elected municipal officers.

All officers elected at the general municipal election provided for in Section 23-15-173, shall qualify and enter upon the discharge of their duties on the first day of July after such general election that is not on a weekend, and shall hold their offices for a term of four (4) years and until their successors are duly elected and qualified.

SOURCES: Codes, 1930, § 2597; 1942, § 3374-62; Laws, 1922, ch. 219; Laws, 1928, ch. 184; Laws, 1932, ch. 226; Laws, 1936, ch. 281; Laws, 1950, ch. 491, § 62; Laws, 1986, ch. 458, § 27; Laws, 1988, ch. 488, § 6; Laws, 2010, ch. 319, § 3, eff July 22, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — Laws of 1979, ch. 452, § 30, amended this section, contingent on being effectuated under section 5 of the Voting Rights Act of 1965, as amended and extended. Chapter 452 never became effective and was repealed by Laws of 1982, ch. 477, § 7, effective from and after April 22, 1982.

By letter dated July 22, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 319, § 3.

Cross References — Applicability of particular sections to various municipalities, see § 21-15-39.

Timing of primary and general elections for municipal offices, see §§ 23-15-171 and 23-15-173.

Nominations for municipal offices which are elective, see § 23-15-309.

Provisions for filling vacancies in city, town, or village offices which are elective, see §§ 23-15-857 and 23-15-859.

When terms of district and county officers begin, see § 25-1-5.

Nepotism being forbidden, see § 25-1-53.

Vacating office by leaving local area or by failing to account for public funds, see § 25-1-59.

ATTORNEY GENERAL OPINIONS

A mayor served two separate terms, the first from July, 1993 to July, 1997 and the second from July, 1997 to July, 2001. King, May 24, 2002, A.G. Op. #02-0272.

An incumbent alderman who served for the preceding term in an office for which no candidate has filed a valid qualifying petition for the upcoming term could "hold over" in accordance with Sections 21-15-1 and 25-1-7, until a special election to fill a vacancy is held as required by Section 23-15-857, assuming his bond remains in effect. Wiggins, May 6, 2005, A.G. Op. 05-0216.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 250.

63C Am. Jur. 2d, Public Officers and Employees §§ 163 et seq.

15A Am. Jur. Legal Forms 2d, Public Officers § 213:26 (statement of election contributions and expenses).

15A Am. Jur. Legal Forms 2d, Public Officers §§ 213:59-213:60 (oath or affirmation of public officer).

20A Am. Jur. Pl & Pr Forms (Rev), Public Officers and Employees, Form 1 (complaint, petition, or declaration by public officer to enjoin violation or threatened violation of criminal statute).

20A Am. Jur. Pl & Pr Forms (Rev), Public Officers and Employees, Form 3 (notion to substitute public officer's successor as plaintiff).

20A Am. Jur. Pl & Pr Forms (Rev), Public Officers and Employees, Form 4 (order substituting public officer's successor as plaintiff).

20A Am. Jur. Pl & Pr Forms (Rev), Public Officers and Employees, Form 21 (petition or application for writ of mandamus to compel surrender of property, records, and insignia of office to successor).

20A Am. Jur. Pl & Pr Forms (Rev), Public Officers and Employees, Form 114 (complaint, petition, or declaration against municipal officer and sureties).

21 Am. Jur. Pl & Pr Forms (Rev), Quo Warranto, Form 41 (complaint or information to oust usurper from elective office).

CJS. 62 C.J.S., Municipal Corporations §§ 456 et seq.

67 C.J.S., Officers and Public Employees §§ 136-142 et seq., 209.

§ 21-15-2. Municipalities prohibited from imposing additional requirements on elected officials.

No municipality, including municipalities operating under a charter city, code charter or special charter, shall impose any additional requirements on holding any municipal elective office or receiving compensation for any elective office except as may be provided by law.

SOURCES: Laws, 2002, ch. 590, § 3; Laws, 2003, ch. 455, § 1, eff from and after October 1, 2003.

Editor's Note — The United States Attorney General, by letter dated July 22, 2002, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the addition of this section by Laws, 2002, ch. 590, § 3.

The United States Attorney General, by letter dated June 9, 2003, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2003, ch. 455, § 1.

§ 21-15-3. Election of officers by governing authorities.

At the first regular meeting of the governing authorities succeeding each regular municipal election, they shall elect the officers to be elected by them and such officers shall take the oath of office.

SOURCES: Codes, 1892, § 2992; 1906, § 3389; Hemingway's 1917, § 5917; 1930, § 2525; 1942, § 3374-95; Laws, 1904, ch. 156; Laws, 1950, ch. 491, § 95; Laws, 1954, ch. 351; Laws, 1986, ch. 458, § 28, eff from and after October 1, 1986.

Editor's Note — Section 48, Chapter 458, Laws of 1986, provided that § 21-15-3 would stand repealed from and after October 1, 1989. Subsequently, three 1989 chapters (341, 342, and 343) amended Section 48, Chapter 458, Laws of 1986, by deleting the date for repeal.

Cross References — Application of particular sections to various municipalities, see § 21-15-39.

Nepotism being forbidden, see § 25-1-53.

Duty of municipal health officer in case of public health nuisance, see § 41-23-13.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

This section (§ 2992, Code of 1892) must be construed in the light and as part of the entire chapter on municipalities. Ott v. State ex rel. Lowery, 78 Miss. 487, 29 So. 520 (1901).

Under this section (§ 2992, Code of 1892) providing that at the first regular meeting of the mayor and board of aldermen succeeding each regular election they shall elect inferior officers, the new or incoming mayor and board of aldermen alone have the right to elect such officers, and this is true even when a regular meeting under § 2989, Code 1892, be held by the old board after the election and before the organization of the new one as provided in § 3030, Code of 1892. Ott v. State ex rel. Lowery, 78 Miss. 487, 29 So. 520 (1901).

ATTORNEY GENERAL OPINIONS

When mayor of mayor-council city is re-elected to office, mayor should submit his appointments for department directors to city council for confirmation each term, even if those named are current directors. Lawrence, March 9, 1994, A.G. Op. #94-0046.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 245-247.

63A Am. Jur. 2d, Public Officers and Employees § 92.

15 Am. Jur. Legal Forms 2d, Public Officers §§ 213:59-213:60 (oath or affirmation of public officer); § 213:74 (application for official bond; §§ 213:75-213:77 (official bond); § 213:97 (acknowledgement of receipt of funds and records on succession to public office); § 213:103 (oath or affirmation taken before official compensation is allowed); § 213:122 (notice of removal of public officer); §§ 213:133 et seq. (recall).

20A Am. Jur. Pl & Pr Forms (Rev), Public Officers and Employees, Form 1 (complaint, petition, or declaration by public officer to enjoin violation or threatened violation of criminal statute); Form 3 (notion to substitute public officer's successor as plaintiff); Form 4 (order substituting public officer's successor as plaintiff); Form 21 (petition or application for writ of mandamus to compel surrender of property, records, and insignia of office to successor); Form 114 (complaint, petition, or declaration against municipal officer and sureties).

CJS. 62 C.J.S., Municipal Corporations § 408, 409.

67 C.J.S., Officers and Public Employees § 59, 65.

§ 21-15-5. Repealed.

Repealed by Laws, 1986, ch. 495, § 329, eff from and after January 1, 1987.

[Codes, 1892, § 3031; 1906, § 3436; Hemingway's 1917, § 5996; 1930, § 2598; 1942, § 3374-64; Laws, 1950, ch. 491, § 64; Laws, 1971, ch. 494, § 1]

Editor's Note — Former § 21-15-5 provided for an appointment to fill a vacancy in public office. Similar provisions may be found at §§ 23-15-831 et seq.

§ 21-15-6. Purchase of general liability insurance coverage.

Municipalities are hereby authorized, in the discretion of the governing authorities, to purchase errors and omissions insurance for municipal officials and municipal employees.

SOURCES: Laws, 1976, ch. 334; Laws, 1977, ch. 490; Laws, 1985, ch. 474, § 45; Laws, 1986, ch. 438, § 9; Laws, 1987, ch. 483, § 15; Laws, 1988, ch. 442, § 12; Laws, 1989, ch. 537, § 11; Laws, 1990, ch. 518, § 12; Laws, 1991, ch. 618, § 11; Laws, 1992, ch. 491 § 12, eff from and after passage (approved May 12, 1992).

Cross References — Insuring of municipal property generally, see § 21-37-45. Defense of public officers and employees generally, see § 25-1-47.

JUDICIAL DECISIONS

1. In general.
2. Constitutionality.

1. In general.

City's sovereign immunity is not waived through self-insurance. Westbrook v. City of Jackson, 665 So. 2d 833 (Miss. 1995).

The Mississippi Municipal Liability Plan does not fit within the definition of insurance under § 83-5-5, which is general liability insurance sufficient to waive sovereign immunity pursuant to § 21-15-6, but instead is self-insurance insufficient to waive sovereign immunity. Morgan v. City of Ruleville, 627 So. 2d 275 (Miss. 1993).

City's membership in Mississippi Municipal Liabilities Plan was not equivalent to purchase by city of general liability insurance and thus did not waive city's sovereign immunity, in action brought by person alleging he was beaten by city police officer in course of arrest. McGee v. Parker, 772 F. Supp. 308 (S.D. Miss. 1991).

Court concluded that Mississippi Supreme Court would probably conclude that city's membership in Mississippi Municipal Liability Plan did not waive city's sovereign immunity as to plaintiffs' state law claims, inasmuch as reserves were not premium payments and were not intended to cover claims such as plaintiffs' claim. Therefore, city was not liable for alleged state law violations. White v. Taylor, 775 F. Supp. 962 (S.D. Miss. 1990), rev'd on other grounds, 959 F.2d 539 (5th Cir. 1992); C-1 ex rel. P-1 v. City of Horn Lake, 775 F. Supp. 940 (N.D. Miss. 1990).

Homeowner's complaint seeking damages from city as result of negligence by city fire department should not have been dismissed where homeowner charged that city maintained general liability insurance which covered loss caused by negligence of fire department employees; court should have permitted development of allegation that city maintained general liability insurance, though not in presence of jury. Davis v. City of Lexington, 509 So. 2d 1049 (Miss. 1987).

Injury resulting from failure of municipality to properly instruct and train police officers in practice of high speed chase is not covered by liability insurance provision providing coverage for damages caused by accident and resulting from ownership, maintenance, or use of insured automobile where injury results when automobile driven by misdemeanant fleeing from police strikes house; however provision does cover damage resulting from police officer's negligence during high speed chase which results in misdemeanant striking house. Smith v. City of W. Point, 475 So. 2d 816 (Miss. 1985).

Party suing municipality pursuant to conditional waiver of immunity found in § 21-15-6 may not name municipality's liability insurance carrier as party defendant. Smith v. City of W. Point, 475 So. 2d 816 (Miss. 1985).

2. Constitutionality.

This section is rationally related to the legitimate purpose of protecting the public treasury and, therefore, does not violate equal protection. Mosby v. Moore, 716 So. 2d 551 (Miss. 1998).

RESEARCH REFERENCES

ALR. Payment of attorneys' services in defending action brought against officials individually as within power or obligation of public body. 47 A.L.R.5th 553.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 202.

§ 21-15-7. Mayor to give information to the governing body.

The mayor shall from time to time communicate, in writing, to the governing body such information and recommend such measures as in his opinion may lead to the improvement of the finances, the police, health, security, ornament, comfort and general prosperity of the municipality.

SOURCES: Codes, 1892, § 2982; 1906, § 3380; Hemingway's 1917, § 5908; 1930, § 2516; 1942, § 3374-90; Laws, 1950, ch. 491, § 90, eff from and after July 1, 1950.

Cross References — Duty to notify governor whenever local resources inadequate to cope with emergencies, see § 33-7-301.

Emergency powers under civil defense law, see §§ 33-15-1 et seq.

ATTORNEY GENERAL OPINIONS

A mayor has the authority to test the emergency services of a municipality for the purpose of evaluating the readiness and effectiveness of the services in the event of an actual emergency and so that necessary changes can be recommended. Ellis, Aug. 1, 1997, A.G. Op. #97-0363.

An incumbent alderman who served for the preceding term in an office for which no candidate has filed a valid qualifying petition for the upcoming term could "hold over" in accordance with Sections 21-15-1 and 25-1-7, until a special election to fill a vacancy is held as required by Section 23-15-857, assuming his bond remains in effect. Wiggins, May 6, 2005, A.G. Op. 05-0216.

§ 21-15-9. Mayor to enforce laws and ordinances.

The mayor shall be active and vigilant in enforcing all laws and ordinances for the government of the municipality, and he shall cause all other officers to be dealt with promptly for any neglect or violation of duty.

SOURCES: Codes, 1892, § 2984; 1906, § 3382; Hemingway's 1917, § 5910; 1930, § 2518; 1942, § 3374-92; Laws, 1950, ch. 491, § 92, eff from and after July 1, 1950.

Cross References — Limited application of section to various municipalities, see § 21-15-39.

Officers enforcing law being prohibited from acquiring confiscated property, see § 25-1-51.

Revocation of driver's license, see § 63-1-51.

ATTORNEY GENERAL OPINIONS

If the board of aldermen determines and establishes by lawful order that the duties of the head of maintenance require access to all municipal buildings, and the mayor does not veto that order, it is the duty of the mayor to see that this order is lawfully carried out; if the mayor refuses to follow the lawful orders of the board, the board may file suit against the mayor in a court of competent jurisdiction. Freeman and Daily, Mar. 15, 2002, A.G. Op. #02-0078.

The mayor may request attendance but may not force attendance at a weekly staff meeting of an elected police chief. Lee, Jan. 3, 2003, A.G. Op. #02-0749.

A weekly staff meeting of the mayor and departments heads, including the police chief, does not conflict with the doctrine of separation of powers set forth in Article 1 and 2 of the Mississippi Constitution. Lee, Jan. 3, 2003, A.G. Op. #02-0749.

Residents of a municipality may meet

with the mayor to discuss any matter pertaining to the operation of the municipality, including police protection, and the mayor may meet with the police chief or police officers to gather information concerning operation of the police department and may also direct residents to communicate with the police chief concerning police protection generally or specific ongoing situations in law enforcement. Lee, Jan. 3, 2003, A.G. Op. #02-0749.

The mayor may meet with police officers to obtain information concerning the operation of the police department, but the mayor does not have authority to become involved in the day to day operation of the police department or to make law enforcement decisions. Lee, Jan. 3, 2003, A.G. Op. #02-0749.

The mayor does not have the sole right to remove matters from the agenda, or to establish the order of the agenda, or to control the manner in which the agenda is developed, in that a majority of the board of aldermen control the agenda. Young, Aug. 6, 2004, A.G. Op. 04-0390.

§ 21-15-11. Mayor to demand exhibit of accounts.

The mayor shall have power, when he deems it proper, to require any officer of the municipality to exhibit his accounts or other papers, and to make report to the governing body, in writing, touching any subject or matter he may require pertaining to his office.

SOURCES: Codes, 1892, § 2983; 1906, § 3381; Hemingway's 1917, § 5909; 1930, § 2517; 1942, § 3374-91; Laws, 1950, ch. 491, § 91, eff from and after July 1, 1950.

Cross References — Limited application of this section to various municipalities, see § 21-15-39.

§ 21-15-13. Mayor may call in aid.

The mayor is authorized to call on every male inhabitant of the municipality over twenty-one years of age and under sixty years to aid in enforcing the laws.

SOURCES: Codes, 1892, § 2985; 1906, § 3383; Hemingway's 1917, § 5911; 1930, § 2519; 1942, § 3374-93; Laws, 1950, ch. 491, § 93, eff from and after July 1, 1950.

Cross References — Sheriff's employing power of the county in executing process, see § 19-25-39.

Limited application of this section to municipalities, see § 21-15-39.

Reciprocal law enforcement between municipalities during civil emergencies, see §§ 21-21-31 et seq.

Governor's authority to order into active state duty the organized and unorganized militia, see §§ 33-5-9, 33-7-301.

Duty to notify governor whenever local resources inadequate to meet emergencies, see § 33-7-301.

Municipalities establishing local organizations for civil defense, see § 33-15-17.

Appointment of extra deputies and police officers, see § 45-5-9.

§ 21-15-15. Power of mayor to remit and vacate fines, penalties and forfeitures.

The mayor shall have the power to remit fines and forfeitures, and to vacate and annul penalties of all kinds, for offenses against the ordinances of the municipality, by and with the consent of the governing body. However, a fine, forfeiture or penalty shall not be remitted, vacated or annulled unless the reasons therefor be entered on the minutes by the clerk, together with and as a part of the order so doing.

SOURCES: Codes, 1892, § 2986; 1906, § 3384; Hemingway's 1917, § 5912; 1930, § 2520; 1942, § 3374-94; Laws, 1950, ch. 491, § 94, eff from and after July 1, 1950.

Cross References — Governor's authority to pardon and notice to community, see Miss. Const. Art. 5, § 124.

Limited application of this section to various municipalities, see § 21-15-39.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

The authority given for the mayor with the consent of the board of aldermen to remit fines imposed in violation of municipal ordinances is not invalid as interfering with the constitutional power of pardon committed to the governor of the state. Allen v. McGuire, 100 Miss. 781, 57 So. 217, Am. Ann. Cas. 1914A,483 (1912).

A municipality is without power under the Const. 1890, § 100, to refund money deposited with it, which has been forfeited by the depositor's breach of contract in respect to public work and is equally without power under § 183 of the same instrument, to donate the fund to another association which has completed the work. Jackson Elec. Ry. & L. Power Co. v. Adams, 79 Miss. 408, 30 So. 694 (1901).

The authority conferred upon municipalities to remit forfeitures relates only to such forfeitures as accrue in criminal proceedings. Jackson Elec. Ry. & L. Power Co. v. Adams, 79 Miss. 408, 30 So. 694 (1901).

§ 21-15-17. Municipal clerk; duty to keep minute record and municipal seal.

It shall be the duty of the clerk of every municipality within the State of Mississippi to keep a record of permanent construction to be labeled "Municipal Minutes, City (or Town or Village, as the case may be) of ________," in which he shall record the proceedings and all orders and judgments of the governing authority of said municipality, and to keep the same fully indexed alphabetically, so that all entries on said minutes can be easily found. Said clerk shall likewise record in said minute record all ordinances in full, or in lieu thereof, the title of all ordinances. In either case, however, the ordinances in full shall be recorded in the ordinance record provided for in Section 21-13-13, to be kept by said clerk.

In the event only the titles of ordinances are recorded in the minute record, it shall be necessary that the ordinance in full, after the recordation in the ordinance record, be read, verified and subscribed to by the mayor and clerk at the next regular meeting of the governing authority of the municipality.

All official actions of the governing authorities of a municipality shall be evidenced only by official entries duly recorded on such minute record.

The clerk shall be the custodian of the municipal seal, and each municipality shall adopt and provide a seal.

SOURCES: Codes, 1892, §§ 2993, 2994, 3009; 1906, §§ 3390, 3391, 3407; Hemingway's 1917, §§ 5918, 5919, 5937; 1930, §§ 2527, 2528, 2545; 1942, §§ 3374-75, 3374-97; Laws, 1950, chs. 507, 491, §§ 75, 97; Laws, 1966, ch. 591, § 1; Laws, 1995, ch. 447, § 2, eff from and after July 1, 1995.

Cross References — Foregoing being portion of clerk's duties under council form of government, see § 21-7-15.

Municipal clerk's duty to keep record of ordinances, see § 21-13-13.

Other duties of municipal clerks, see §§ 21-15-19 and 21-15-21.

Provision that the clerk of a municipality shall be the custodian of voting devices acquired by the municipality, see § 23-15-473.

Provision that the clerk of a municipality shall be the custodian of optical mark reading equipment acquired by the municipality as part of a voting system, see § 23-15-515.

Responsibilities of municipal clerks relative to provisions requiring disclosure of campaign finances, see §§ 23-15-805 and 23-15-815.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2. Effect of noncompliance.
3. Presumptions and evidence.

4.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

City could convey to developer land which it had reserved for drainage, and since the transaction in which the conveyance had been made was entered into the city's minute book, the conveyance was valid. Modling v. Bailey Homes & Ins., 490 So. 2d 887 (Miss. 1986).

The statutes make it essential to the validity of a municipal ordinance that the minutes of the mayor and board of aldermen for the period of its enactment be signed by the mayor and attested by the city clerk. Ballard v. Smith, 234 Miss. 531, 107 So. 2d 580, 75 A.L.R.2d 152 (1958).

2. Effect of noncompliance.

1953 zoning ordinances enacted by the city of Tupelo were invalid where the minutes of the mayor and board of aldermen for the period in which the ordinance was enacted were not signed by the mayor and attested by the city clerk. Ballard v. Smith, 234 Miss. 531, 107 So. 2d 580, 75 A.L.R.2d 152 (1958).

The requirement hereunder that the municipal clerk append to the ordinance "a note stating the date of its passage, and cite therein the book and page of the minutes containing the record of its passage," is merely directory and for convenience in finding the ordinance in the minutes of the city's governing body, and a failure to comply therewith has no effect on the ordinance or on the copy thereof in the ordinance book. Jimmerson v. City of Oxford, 190 Miss. 884, 2 So. 2d 152 (1941).

3. Presumptions and evidence.

A clerk authorized under the charter to register the proceedings and ordinances of the municipality is presumed to have done so and an ordinance found registered in the proper book by such clerk is presumed to be valid, where entry in the book clearly shows its adoption. City of Corinth v. Sharp, 107 Miss. 696, 65 So. 888 (1914).

4.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

A recital in subsequent minutes that an order had been made at a previous meeting fixing a time for hearing objections to a tax assessment imports such verity that, although the records fail to disclose any such order, it is presumed that the order was made but failed to be recorded. Hawkins v. City of W. Point, 200 Miss. 616, 27 So. 2d 549 (1946).

A printed proof of the publication of a municipal ordinance setting forth the ordinance at length and the date of its passage securely pasted to one of the pages of the municipal ordinance book will satisfy the requirements of this section, so that it is not error to admit in evidence the ordinance book in which such ordinance appeared in a prosecution for possession of intoxicating liquor in violation of the ordinance in question. Jimmerson v. City of Oxford, 190 Miss. 884, 2 So. 2d 152 (1941).

Statute requiring municipal clerk to keep well-bound book to record proceedings and orders, ordinances, and judgments, is mandatory. Town of Ackerman v. Choctaw County, 157 Miss. 594, 128 So. 757 (1930).

In prosecution for violating ordinance, ordinance, to be admissible, must be verified by certificate of clerk and by seal of town. Dennis v. Town of Walnut Grove, 157 Miss. 797, 128 So. 557 (1930).

This section is directed to the clerk with reference to transcribing ordinances in the ordinance book, and the clerk's failure to transcribe an ordinance does not invalidate the ordinance. City of Greenwood v. Jones, 91 Miss. 728, 46 So. 161 (1908).

ATTORNEY GENERAL OPINIONS

Official record is written record required to be kept by municipal clerk, pursuant to Section 21-15-17 but tape recording and transcripts are public records subject to disclosure under open records law; reasonable access to tape recordings or transcripts cannot be denied to mayor or alderman. DeMetz, Feb. 9, 1994, A.G. Op. #93-0842.

In a municipality with a claims docket, the governing authorities must record in the minutes the approval of the claims docket and must refer to the claim numbers in the claims docket; in a municipality without a claims docket, the governing authorities must record in the minutes the approval of the claims and the names of the claimants, the dates the claims were presented, the amounts and the nature of the claims. Donald, August 13, 1999, A.G. Op. #99-0392.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 176 et seq.

66 Am. Jur. 2d, Records and Recording Laws §§ 1-7, 54-70, 149.

CJS. 76 C.J.S., Records §§ 1, 8, 9, 10-20, 33-36 .

§ 21-15-19. Municipal clerk; duties as to dockets records.

In addition to the claims docket provided for in Section 21-39-7 the clerk shall keep a record of permanent construction to be styled "Municipal Docket," upon which he shall enter each subject, other than claims and accounts, to be acted upon by the governing authorities at the next meeting. After each meeting he shall make up such docket for the next regular meeting, and he shall examine the statutes of the state and the ordinances of the municipality to ascertain the subjects required or proper to be acted upon at the following meeting, and shall docket all such matters. He shall keep all such other records as may be provided for by ordinance, and shall file in his office and preserve all records pertaining to the business of the municipality.

SOURCES: Codes, 1892, § 2995; 1906, § 3392; Hemingway's 1917, § 5920; 1930, § 2529; 1942, § 3374-98; Laws, 1950, ch. 491, § 98; Laws, 1995, ch. 447, § 3, eff from and after July 1, 1995.

Cross References — Foregoing being portion of clerk's duties under council form of government, see § 21-7-15.

Other duties of municipal clerks, see §§ 21-15-17 and 21-15-21.

Limited application to various municipalities, see § 21-15-39.

Clerk's keeping books and records of municipal funds, see § 21-35-11.

Maintaining claims docket, see § 21-39-7.

JUDICIAL DECISIONS

1. In general.
2. Authority to act.

1. In general.

When a city's intoxilyzer has been inspected and a certificate of accuracy issued, the municipal clerk's office is fairly seen as the statutorily authorized location for the certificate to be filed. Callahan v. State, 811 So. 2d 420 (Miss. Ct. App. 2001).

2. Authority to act.

Where the mayor and board of aldermen held a special session without giving notice and overturned the decision of the board of zoning appeals affirming a building permit in favor of an ice company, the mayor exceeded his authority under Miss. Code Ann. § 21-15-9. The company's right to due process was violated. City of Petal v. Dixie Peanut Co., 994 So. 2d 835 (Miss. Ct. App. 2008), writ of certiorari dismissed by 998 So. 2d 1010, 2008 Miss. LEXIS 683 (Miss. 2008).

ATTORNEY GENERAL OPINIONS

Town's records should be kept at clerk's office in City Hall rather than at his home and records must be available to public during regular business hours. Harvey, Jan. 12, 1994, A.G. Op. #93-0871.

The records of a municipality must be maintained in a manner and at a location that provides access to the taxpayers during regular business hours. Hatcher, Dec. 28, 1999, A.G. Op. #99-0660.

RESEARCH REFERENCES

Am Jur. 66 Am. Jur. 2d, Records and Recording Laws §§ 54-70, 149.

21 Am. Jur. Pl & Pr Forms (Rev), Records and Recording Laws, Forms 13-16 (certificates).

2 Am. Jur. Trials 409, Locating Public Records.

CJS. 76 C.J.S., Records §§ 8, 11-20.

§ 21-15-21. Municipal clerk to serve as auditor.

The clerk shall be the auditor of the municipality. He shall keep a record, in which he shall enter and preserve accounts of each particular fund, and the accounts of each municipal officer. The treasurer or depository shall not receive money from any source until the same has been reported to the clerk and audited and a receipt warrant issued therefor. All fines and forfeitures shall be reported by the officer collecting the same immediately after such collection, and be paid into the treasury. The record of the auditor shall be subject to inspection by the taxpayers of the municipality at any time during business hours.

SOURCES: Codes, 1892, § 3027; 1906, § 3432; Hemingway's 1917, § 5992; 1930, § 2594; 1942, § 3742-42; Laws, 1950, ch. 492, § 42; Laws, 1995, ch. 447, § 4, eff from and after July 1, 1995.

Cross References — Board of supervisors' clerk being county auditor, see § 19-17-1.
Other duties of municipal clerks, see §§ 21-15-17 and 21-15-21.
Applicability to certain municipalities, see § 21-15-39.

JUDICIAL DECISIONS

1. In general.

A superintendent of a separate school district may compel the clerk of the municipality to issue a warrant in payment for his services as superintendent of the school by mandamus. Ladner v. Talbert, 121 Miss. 592, 83 So. 748 (1920).

The receipt warrant is a part of the fiscal machinery devised to be followed to keep proper record of the town's money intended for the convenience and protection of the municipality; But it is not the exclusive evidence of the reception of money by the treasurer. Town of Gloster v. Harrell, 77 Miss. 793, 23 So. 520 (1898).

It is not for the treasurer or his sureties, the money of the town being traced to his hands by other competent evidence, to find shelter under the absence of a mere receipt warrant or the fact that his bond was approved by resolution instead of ordinance. Town of Gloster v. Harrell, 77 Miss. 793, 23 So. 520 (1898).

ATTORNEY GENERAL OPINIONS

Under Miss. Code Section 21-15-21, city clerk is responsible to council and is auditor of municipality; clerk keeps accounting records which are necessary for preparing financial statements; therefore, mayor-council municipality may hire internal auditor who is deputy clerk to make studies of bookkeeping system and to prepare financial statements of municipality, but there is no authority for mayor of mayor-council municipality to appoint internal auditor, unless department has been created by ordinance of council. Hewes, Apr. 7, 1993, A.G. Op. #93-0131.

Town's records should be kept at clerk's office in City Hall rather than at his home and records must be available to public during regular business hours. Harvey, Jan. 12, 1994, A.G. Op. #93-0871.

The records of a municipality must be maintained in a manner and at a location that provides access to the taxpayers during regular business hours. Hatcher, Dec. 28, 1999, A.G. Op. #99-0660.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, etc. Form 96 (complaint, petition, or declaration, by resident and taxpayer, to restrain city from unlawfully expending funds to employ auditor to establish accounting system).

§ 21-15-23. Deputy clerk; oath of office; surety bond.

Every city in the State of Mississippi, whether operating under a code charter, a special charter, or commission form of government, acting through its governing authorities, is hereby authorized and empowered, by resolution or ordinance duly adopted, to appoint one or more deputy city clerks, each of whom shall have all of the power and authority that is vested in the city clerk of such city. Such governing authorities shall have the right to pay such salary to such deputy city clerk, or clerks, as may be fixed in the resolution or ordinance appointing such deputy city clerk, but not exceeding the salary paid to the city clerk.

Every deputy city clerk so appointed shall serve at the will and pleasure of said governing authorities and may be removed at any time at the pleasure of such municipal governing authorities, and upon such removal all salaries or fees of such deputy city clerk shall thereupon cease.

Every deputy city clerk, before entering upon the duties of his office, shall take and subscribe the same oath required of the city clerk. The appointment of said deputy city clerk, with the certificate of the oath, shall be filed and preserved in the office of the clerk of the governing authorities of such city. Such deputy city clerk shall give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in an amount to be determined by the governing authority (which shall be not less than Fifty Thousand Dollars ($50,000.00)).

SOURCES: Codes, 1942, § 3374-99; Laws, 1940, ch. 288; Laws, 1950, ch. 491, § 99; Laws, 1986, ch. 458, § 29; Laws, 1988, ch. 488, § 7; Laws, 2009, ch. 467, § 10, eff from and after July 1, 2009.

Cross References — Summary of clerk's duties, see § 21-7-15.
Limited application to various municipalities, see § 21-15-39.

§ 21-15-25. Municipal attorney; appointment and compensation.

The governing authorities may annually appoint an attorney-at-law for the municipality, prescribe his duties and fix his compensation, and/or they may employ counsel to represent the interest of the municipality, should the occasion require. For services and duties which the regular city attorney is not required to perform as a result of his employment as such, and which are not covered by the regular compensation paid him, such municipal attorney may be employed and compensated additionally. In cases where an attorney, whether same be the regular municipal attorney or another, shall be employed in the matter of issuing or refunding of bonds and the drafting of all orders and resolutions in connection therewith, the governing authorities shall have the power to pay reasonable compensation to such attorney, but in no instance shall such compensation so paid exceed one per cent (1%) of the bonds issued or refunded; however, where the regular contract of employment and compensation paid to the municipal attorney covers and includes services in connection with the issuing or refunding of bonds, then such regular municipal attorney shall not be paid additional compensation for such services.

Should the services and duties required of a regular municipal attorney at any time during his term of office become greater than that anticipated by the governing authorities at the time of his appointment, the governing authorities, by unanimous vote, and on proper finding, may increase the compensation of such attorney for the remaining portion of his term in such amount as the governing board may find and adjudge to be fair and reasonable to compensate said attorney for his excessive and unanticipated services and duties.

SOURCES: Codes, 1892, § 2992; 1906, § 3389; Hemingway's 1917, § 5917; 1930, § 2525; 1942, §§ 2958, 3374-95; Laws, 1904, ch. 156; Laws, 1950, ch. 491, § 95; Laws, 1954, ch. 351; Laws, 1958, ch. 220; Laws, 1960, chs. 190, 191; Laws, 1962, chs. 248 and 249; Laws, 1964, ch. 275, § 1; Laws, 1966, ch. 296, § 1; Laws, 1968, ch. 285, §§ 1, 2; Laws, 1971, ch. 429, § 1; Laws, 1972, ch. 393, § 1; Laws, 1973, ch. 336, § 1, eff from and after passage (approved March 21, 1973).

Cross References — County's employing attorney, see § 19-3-47.

Employment of firm of attorneys, see § 21-15-27.

Limited application to various municipalities, see § 21-15-39.

Municipal attorney's bringing suit if clerk fails to keep books as prescribed, see § 21-35-11.

Municipal attorney's bringing action when expenditures made in excess of budget limitations, see § 21-35-17.

Officers enforcing law being prohibited from acquiring confiscated property, see § 25-1-51.

Duty of municipal attorney in case of public health nuisance, see § 41-23-13.

JUDICIAL DECISIONS

1. In general.
2. Employment of counsel.
3. Use of additional counsel.
4. Unauthorized expenditures.
5. Under former law.

1. In general.

Since city charter was silent on method for selecting a city attorney, statutory law applied and permitted the "governing authorities" to appoint an attorney for the municipality, which meant the mayor and board of alderman; however, since the city's charter expressly stated that the mayor could only vote in the event of a tie and the city council's vote in favor of appointing the particular person did not end in a tie, the mayor was not authorized to vote on that matter. Tisdale v. City Council of Aberdeen, 856 So. 2d 323 (Miss. 2003).

Ordinances requiring city council approval for mayor's appointment of city attorney, municipal judges, and prosecutors are consistent with statutory requirement that executive authority be vested with mayor in mayor-council form of government. Jordan v. Smith, 669 So. 2d 752 (Miss. 1996).

An admission of counsel for a defendant county in a suit for damages for abandoning a highway is binding on the county. Noxubee County v. Long, 141 Miss. 72, 106 So. 83 (1925).

Where the revenue agent brought a suit in behalf of the county against a depository the court had the discretion to permit an attorney for the Board of Supervisors to co-operate with the revenue agent in the suit. Robertson v. Bank of Batesville, 116 Miss. 501, 77 So. 318 (1918).

This section [Code 1942, § 3374-95] must be construed in the light and as part of the entire chapter on municipalities. Ott v. State ex rel. Lowery, 78 Miss. 487, 29 So. 520 (1901).

2. Employment of counsel.

Under § 21-3-15, the mayor of a town operating under a code charter had the authority to veto an order of its board of aldermen appointing a town attorney. Edwards v. Weeks, 633 So. 2d 1035 (Miss. 1994).

Resolution of municipal governing board for the employment of counsel in certain cases held sufficiently definite to constitute a contract. Smith v. Ballard, 241 Miss. 194, 129 So. 2d 635 (1961).

Where a board of supervisors in issuing refunding bonds as provided by law, engaged in connection therewith the services of an attorney, who on declining to proceed further without increased compensation received a settlement for his work done and expenses incurred, and new attorneys were engaged to complete the work, and the Board of Supervisors made appropriations for the payment of such attorney's fees under their authority to appropriate money for the payment of the expenses incurred in issuing the bonds, no liability accrued against the Board of Supervisors, notwithstanding that such appropriation for attorney's fees may have exceeded the amount authorized or that they were in violation of constitutional provisions prohibiting extra compensation to public officers, agents, servants or contractors after service rendered or contract made or part payment of any claim under a contract not authorized by law, and against relief of any obligation or liability owing to any county, etc. Causey v. Gilbert, 193 Miss. 756, 10 So. 2d 451 (1942).

A city may employ associate counsel to assist its city attorney in any case where its authorities deem it necessary. Vicksburg Waterworks Co. v. City of Vicksburg, 99 Miss. 132, 54 So. 852, Am. Ann. Cas. 1913D,917 (1911).

3. Use of additional counsel.

Orders of city council employing outside counsel to assist city attorney in pending litigation held to authorize such counsel to assist in prosecuting litigation to conclusion or to effect. Gwin v. City of Greenwood, 159 Miss. 110, 131 So. 821 (1931).

The employment by the board of supervisors of counsel by the year as authorized by this section [Code 1942, § 2958] does not deprive it of power to employ a competent person, although he be a lawyer, other than the one previously employed, to investigate the titles to the sixteenth section school lands and to bring suits to confirm titles thereto. Warren County v. Dabney, 81 Miss. 273, 32 So. 908 (1902).

4. Unauthorized expenditures.

Board of supervisors is not authorized to pay traveling expenses of its attorney in performance of his duties except those while representing board before State Tax Collector. Gully v. Bridges, 170 Miss. 891, 156 So. 511 (1934).

Bill against board of supervisors and its attorney, alleging illegal payment of attorney's traveling expenses, held not subject to general demurrer. Gully v. Bridges, 170 Miss. 891, 156 So. 511 (1934).

The statute does not authorize the board to pay an attorney for procuring to be done what is its duty to have done, such as requiring officers to give new bonds in certain cases. Marion County v. Taylor, 55 Miss. 184 (1877).

5. Under former law.

The board of supervisors, under Code 1892, § 293 may employ advisory counsel by the year at an annual salary, and during the employment of such counsel, may employ other counsel in civil cases in which the county is interested and in criminal cases mentioned in the code section. Board of Supvrs. v. Booth, 81 Miss. 267, 32 So. 1000 (1902).

Under this section (§ 2992, Code of 1892) providing that at the first regular meeting of the mayor and board of aldermen succeeding each regular election they shall elect inferior officers, the new or incoming mayor and board of aldermen alone have the right to elect such officers, and this is true even when a regular meeting under § 2989, Code 1892, be held by the old board after the election and before the organization of the new one as provided in § 3030, Code of 1892. Ott v. State ex rel. Lowery, 78 Miss. 487, 29 So. 520 (1901).

ATTORNEY GENERAL OPINIONS

Mayor's veto power extends to selection of school trustee, but this veto is subject to override by two-thirds vote of Board; following same logic, this veto authority extends to selection of municipal attorney. Sessums, March 14, 1990, A.G. Op. #90-0142.

Miss. Code Section 21-15-25, which provides in pertinent part that "governing authorities may annually appoint an attorney at law for the municipality, prescribe his duties and fix his compensation, and/or they may employ counsel to represent the interest of the municipality, should the occasion require", is discretionary, not mandatory, and city need not appoint attorney under this section. Hewes, Mar. 29, 1993, A.G. Op. #92-0952.

Municipal governing authorities may employ an attorney to represent the civil service commission for a specific dispute that the commission has with the governing authorities, including a dispute concerning whether the city is providing services, facilities or personnel required by statute, and the attorney may be compensated for such services. Jordan, July 11, 1997, A.G. Op. #97-0350.

A mayor has the power to veto an order by a board of aldermen appointing a city attorney. Lee, Aug. 8, 1997, A.G. Op. #97-0459.

Municipal governing authorities may annually appoint an attorney to represent the interests of the municipality and to prescribe the duties and compensation of the position, but where the discretionary authority to appoint an attorney is not exercised, it is within the authority of the governing authorities to include the duty to prosecute cases in the municipal court among the prescribed duties of the regular municipal attorney along with such additional duties as may be specified in the municipal attorney's employment contract. Creekmore, January 9, 1998, A.G. Op. #97-0780.

In situation where there was no appointment of another city attorney in the period to and throughout the litigation over the authority to appoint the city attorney, the former city attorney whose term had expired could continue to perform the duties of the position until such time as his successor was appointed; for these services the former city attorney would be entitled to compensation according to the terms of his prior appointment. Tisdale, January 16, 1998, A.G. Op. #97-0688.

There is no authority for the city council to appoint or employ a council attorney or attorneys to advise or render legal assistance to the city council. Stokes, March 5, 1999, A.G. Op. #99-0063.

There is no authority under the statute for the city council to appoint or employ an attorney. McLemore, Jan. 25, 2002, A.G. Op. #02-0004.

The board of aldermen of a town may hire the grandson-in-law of the mayor as the municipal attorney. Fielding, Jan. 24, 2003, A.G. Op. #03-0019.

Governing authorities may only enter into a contract for legal services or other professional services by order in the minutes, and the governing authorities should clearly set forth in the minutes the scope of legal services which the city attorney will perform on a routine basis as well as additional authority to represent the city in litigation as the need arises. Moton, Mar. 14, 2003, A.G. Op. #03-0115.

In a mayor-council municipality the city council has the authority to enact an ordinance requiring the mayor to submit any appointee to the position of municipal attorney to the council for advice and consent. Magee, July 29, 2005, A.G. Op. 05-0390.

Section 21-15-25 does not authorize a municipality to hire additional counsel to represent municipal officers who are in disagreement with a decision of the governing authority. The municipal attorney appointed pursuant to Section 21-15-25 represents the municipality, not one or more officers. Lawrence, July 26, 2006, A.G. Op. 06-0257.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 275.

§ 21-15-27. Employment of firm of attorneys.

The municipal authorities of any city or town, in this state, in addition to the authority now conferred upon them by Section 21-15-25, may in their discretion employ a firm of attorneys to represent them as their regular attorneys on the same terms, conditions and compensation as now provided for employment of an attorney as their regular attorney. However, there shall not be an attorney and a firm of attorneys employed at the same time as the regular attorney for such municipal authorities.

SOURCES: Codes, 1942, § 3374-95.5; Laws, 1962, 2d Ex Sess. ch. 25, §§ 1-3, eff from and after passage (approved Dec. 8, 1962).

Cross References — County's employing attorney, see § 19-3-47.
Appointment and compensation of municipal attorney, see § 21-15-25.
Limited application to all municipalities, see § 21-15-39.

ATTORNEY GENERAL OPINIONS

Governing authorities may only enter into a contract for legal services or other professional services by order in the minutes, and the governing authorities should clearly set forth in the minutes the scope of legal services which the city attorney will perform on a routine basis as well as additional authority to represent the city in litigation as the need arises. Moton, Mar. 14, 2003, A.G. Op. #03-0115.

A law firm retained by a municipality in accordance with this section is not an "employee" of the municipality and therefore members of the firm and their dependents are not eligible for the health insurance coverage specified in §§ 25-15-101 and 25-15-103. Campbell, Sept. 3, 2004, A.G. Op. 04-0440.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 215 et seq.

3 Am. Jur. Legal Forms 2d, Attorneys at Law § 30:35 (contract with attorney performing special services).

§ 21-15-29. Repealed.

Repealed by Laws, 1983, ch. 469, § 10, eff from and after July 1, 1983.

[Codes, Hemingway's 1921 Supp. §§ 6069i, 6069j; 1930, § 2526; 1942, § 3374-96; Laws, 1920, ch. 248; Laws, 1932, ch. 217; Laws, 1950, ch. 491, § 96]

Editor's Note — Former § 21-15-29 prohibited certain acts of municipal attorneys.

§ 21-15-31. Compensation of building inspector.

In no case shall the building inspector retain any compensation from his collections, but the full amount of such collections shall be paid into the municipal treasury and his compensation shall thereafter be paid by allowance thereof by the governing authorities of the municipality, and the issuance of warrants, as in other cases.

SOURCES: Codes, 1892, § 2998; 1906, § 3395; Hemingway's 1917, § 5923; 1930, § 2532; 1942, § 3374-101; Laws, 1950, ch. 491, § 101, eff from and after July 1, 1950.

Cross References — Limited application to various municipalities, see § 21-15-39.

RESEARCH REFERENCES

ALR. Liability of municipal corporation for negligent performance of building inspector's duties. 41 A.L.R.3d 567.

§ 21-15-33. Municipal minutes.

The minutes of every municipality must be adopted and approved by a majority of all the members of the governing body of the municipality at the next regular meeting or within thirty (30) days of the meeting thereof, whichever occurs first. Upon such approval, said minutes shall have the legal effect of being valid from and after the date of the meeting. The governing body may by ordinance designate that the minutes be approved by the mayor.

It shall not be necessary for each ordinance to be signed so long as it appears on the minutes of the municipality, which minutes shall have been signed by the mayor or a majority of the governing body of the municipality and certified by the municipal clerk.

SOURCES: Codes, 1892, § 3006; 1906, § 3404; Hemingway's 1917, §§ 5934, 6054; 1930, §§ 2542, 2642; 1942, § 3374-72; Laws, 1912, ch. 120; Laws, 1950, ch. 491, § 72; Laws, 1966, ch. 590, § 1; Laws, 1972, ch. 331, § 1; Laws, 1991, ch. 552, § 2, eff from and after July 1, 1991.

Cross References — Applicability to various municipalities, see § 21-15-39.
Contracting with newspapers for publication of legal notices, see § 21-39-3.

JUDICIAL DECISIONS

1. In general.

Buyer's appeal of the city's decision not to sign his bill of exceptions was filed outside the ten-day period allowed by Miss. Code Ann. § 11-51-75; pursuant to Miss. Code Ann. § 21-15-33, the ten-day time period for appeal began when the city adjourned the meeting on September 11, 2007, after making a decision about the property. Rankin Group, Inc. v. City of Richland, 8 So. 3d 259 (Miss. Ct. App. 2009).

It was the legislative intent to provide latitude in the signing of minutes in order that official actions should not be invalidated, even if not signed in 10 days. City of Biloxi v. Cawley, 278 So. 2d 389 (Miss. 1973).

Where a city commission convened its regular session on May 17, and by appropriate recessing orders, it continued in regular session on May 18, 24, 26, and June 2, and an annexation ordinance was duly adopted on May 18, and the regular meeting was not finally adjourned until June 2, the 10 days contemplated by Code 1942 § 3374-72 began to run from June 2, and the proceedings of the commission in adopting the annexation ordinance were valid. City of Biloxi v. Cawley, 278 So. 2d 389 (Miss. 1973).

The certificate of the city clerk, certifying as true and correct a copy of the minutes of various meetings of the mayor and board of aldermen, offered by objectors to show that the minutes had not been signed, and the testimony of the deputy chancery clerk that he had photostated the minute book in connection with the preparation of the certificate, should have been admitted and considered by the chancellor, together with the original minute book and all other evidence, in determining if the minutes were valid. Stephens v. Mayor & Bd. of Aldermen, 261 So. 2d 486 (Miss. 1972).

ATTORNEY GENERAL OPINIONS

In a municipality with a claims docket, the governing authorities must record in the minutes the approval of the claims docket and must refer to the claim numbers in the claims docket; in a municipality without a claims docket, the governing authorities must record in the minutes the approval of the claims and the names of the claimants, the dates the claims were presented, the amounts and the nature of the claims. Donald, August 13, 1999, A.G. Op. #99-0392.

The mayor of a code charter municipality does not have authority to veto the official action of the board adopting the minutes when the board has made the factual finding that the minutes accurately reflect all actions taken at the meeting and has adopted the minutes by majority vote pursuant to the statute. Gary, August 20, 1999, A.G. Op. #99-0435.

There are no provisions clearly specifying what occurs upon failure of municipal governing authorities to comply with the requirement to approve minutes within 30 days of the meeting. Wiggins, July 29, 2005, A.G. Op. 05-0385.

The approval of minutes is an act which is effective immediately at the time of the meeting, without the necessity of awaiting the approval of the official minutes of that meeting. Wiggins, Apr. 21, 2006, A.G. Op. 06-0135.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 176 et seq.

66 Am. Jur. 2d, Records and Recording Laws §§ 54-70.

CJS. 76 C.J.S., Records §§ 8, 9, 11-20, 33-36.

§ 21-15-35. Preservation of essential public records of municipal governments.

The Legislature declares that records containing information essential to the operation of government and to the protection of the rights and interests of persons should be protected against the destructive effect of all forms of disaster, whether fire, flood, storm, earthquake, explosion or other, and whether such occurrence is caused by an act of nature or man, including an enemy of the United States. It is, therefore, necessary to adopt special provisions for the preservation of essential records of municipalities, and this section shall be liberally construed to effect its purposes. However, it is the express intention of this section that the provisions herein contained are not mandatory but are permissive only and shall authorize preservation of records as herein contemplated within the discretion of the governing authorities of the municipalities of the state and in accordance with a records control schedule approved by the Local Government Records Committee as provided in Section 25-60-1.

The governing authorities of any municipality within the state, regardless of the form of government under which they operate, are each hereby authorized and empowered in their discretion to make or cause to be made a copy or copies of the records of such municipality, or any portion thereof, deemed by such governing authority to be an essential record necessary to the operation of government in an emergency created by disaster or containing information necessary to protect the rights and interests of persons or to establish and affirm the powers and duties of government in the resumption of operations after the destruction or damage of the original records. Such copies shall be made in accordance with standards established by the Department of Archives and History.

The governing authorities of such municipalities are authorized and empowered in their discretion to make and enter into contracts and agreements with any person, firm or corporation to make and prepare such copy or copies of records, and to provide for and enter into contracts concerning the safekeeping and preservation of such copy or copies at points of storage approved by the Local Government Records Committee as required in Section 25-60-1, at a location other than the legally designated or customary location and deposit of the original of such records.

In the event that the original record or records shall have been destroyed, any such photographic or photostatic copy or reproduction shall be deemed to be an original record for all purposes and shall be treated as an original record in all courts or administrative agencies for the purpose of its admissibility in evidence. An enlargement or facsimile of such reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of court.

The governing authorities of any municipality within the state, regardless of the form of government under which they operate, are authorized and empowered, in their discretion, to appropriate and expend monies out of the available funds of such municipality for the purposes of this section.

SOURCES: Codes, 1942, § 2900.3; Laws, 1963, 1st Ex. Sess. ch. 11, §§ 1-7; Laws, 1996, ch. 537, § 11, eff from and after July 1, 1996.

Cross References — Preservation of essential public records of county government, see § 19-15-1.

Reproducing county records on film and destroying originals, see § 19-15-3.

Authority for county purchasing photorecording equipment, see § 19-15-5.

Reproduction of essential public records of municipal governments, see § 21-15-37.

Preservation, reproduction and destruction of records under the Archives and Records Management Law of 1981, see §§ 25-59-1 et seq.

RESEARCH REFERENCES

Am Jur. 66 Am. Jur. 2d, Records and Recording Laws §§ 60-63.

2 Am. Jur. Trials 409, Locating Public Records.

CJS. 76 C.J.S., Records §§ 13, 15.

§ 21-15-37. Reproduction of municipal records; destruction of originals.

(1) The governing authority of a municipality shall have the power and authority, in its discretion, to destroy or dispose of any records, documents, files or papers which are required by law to be preserved and retained, or which are necessary or desirable to be preserved or retained, after having reproductions made thereof under standards established by the Department of Archives and History and in accordance with a records control schedule approved by the Local Government Records Committee as provided in Section 25-60-1.

(2) Any reproductions or copy of any original record or other documents shall be deemed to be the original record for all purposes and shall be admissible as evidence in all courts or administrative agencies. A facsimile, exemplification or certified copy thereof shall, for all purposes set forth herein, be deemed to be a transcript, exemplification or certified copy of the original record.

(3) The governing authority of any municipality is hereby authorized to pay all expenses incurred in reproducing such records or other documents and in making provision for the preservation, retention and storage of such reproductions from the general support fund of such municipality.

(4) When any of the records or documents of which reproductions are made under the provisions of this section, are declared by law, or are by their nature, confidential and privileged records, then the reproduction thereof shall likewise be deemed to be confidential and privileged to the same extent as the original records or documents.

(5) Nothing herein shall be construed to require the keeping and preservation of any records and documents which are not required by law to be kept and preserved, or which it is not desirable or necessary to keep and preserve, and such records and documents may be destroyed or disposed of in accordance

with a records control schedule approved by the Local Government Records Committee as provided in Section 25-60-1.

SOURCES: Codes, 1942, § 3374-181; Laws, 1962, ch. 538, §§ 1-8; Laws, 1995, ch. 447, § 5; Laws, 1996, ch. 537, § 11, eff from and after July 1, 1996.

Cross References — Admission into evidence of copies certified by public officers, see § 13-1-77.

Preservation of essential public records of county government, see § 19-15-1.

Preservation of public records, see § 21-15-35.

Preservation, reproduction and destruction of records under the Archives and Records Management Law of 1981, see §§ 25-59-1 et seq.

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

Am Jur. 66 Am. Jur. 2d, Records and Recording Laws § 60.

21 Am. Jur. Pl & Pr Forms (Rev), Records and Recording Laws, Forms 13-16 (certificates).

CJS. 76 C.J.S., Records § 13.

§ 21-15-38. Surety bond.

Before any person appointed to the position of municipal clerk, city manager, municipal administrator or municipal chief administrative officer enters upon the discharge of his duties, he shall give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in an amount to be determined by the municipal governing authority (which shall not be less than Fifty Thousand Dollars ($50,000.00)).

SOURCES: Laws, 1986, ch. 458, § 30; Laws, 1988, ch. 488, § 8, eff from and after passage (approved April 30, 1988).

Cross References — Surety bond of officers and employees of various forms of government, see §§ 21-5-9 (commission); 21-7-11 (council); 21-8-23 (mayor-council); and 21-9-21 (council-manager).

§ 21-15-39. Applicability of particular sections.

The provisions of Sections 21-15-3, 21-15-7 through 21-15-19, 21-15-23 to 21-15-31, shall be applicable to all municipalities of this state, whether operating under a code charter, special charter, or the commission form of government, except in cases of conflict between the provisions of such sections and the provisions of the special charter of a municipality, or the law governing the commission form of government, in which cases of conflict the provisions of the special charter or the statutes relative to the commission form of government shall control.

The provisions of Sections 21-15-1, 21-15-5, 21-15-33, shall apply to all municipalities of this state, whether operating under the code charter, a special charter, commission form, or other form of government.

The provisions of Section 21-15-21, shall apply to all municipalities, whether operating under code charter, special charter, or any commission form of government.

SOURCES: Codes, 1942, §§ 3374-68, 3374-81, 3374-111; Laws, 1936, ch. 280; Laws, 1950, ch. 491, §§ 68, 81, 111, ch. 492, § 44; Laws, 1952, ch. 375.

Editor's Note — Section 21-15-5, referred to in this section, was repealed by Laws, 1986, ch. 495, § 329, eff. from and after January 1, 1987.

Cross References — Various forms of municipal government, see §§ 21-3-1 et seq. (code charter); 21-5-1 et seq. (commission); 21-7-1 et seq. (council); 21-8-1 et seq. (mayor-council); and 21-9-1 et seq. (council-manager).

JUDICIAL DECISIONS

I. Under Current Law.

1. Conflict between statute and city charter.
2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. Conflict between statute and city charter.

Since city charter was silent on method for selecting a city attorney, statutory law applied and permitted the "governing authorities" to appoint an attorney for the municipality, which meant the mayor and board of alderman; however, since the city's charter expressly stated that the mayor could only vote in the event of a tie and the city council's vote in favor of appointing the particular person did not end in a tie, the mayor was not authorized to vote on that matter. Tisdale v. City Council of Aberdeen, 856 So. 2d 323 (Miss. 2003).

2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

Const. 1890, §§ 80, 88, among other things providing for general laws to create and govern municipal corporations are prospective in operation and do not repeal existing municipal charters. Therefore this section recognizing the continued existence of such charters is not unconstitutional. Lum v. City of Vicksburg, 72 Miss. 590, 18 So. 476 (1895).

Its corporate authorities having formally accepted the provisions of the Code Chapter, the city of Jackson became bound thereby, and subsequent action of the authorities purporting to rescind the resolution of acceptance, though within twelve months, was ineffectual. Ex parte Shlomberg, 70 Miss. 47, 11 So. 721 (1892); State v. Govan, 70 Miss. 535, 12 So. 959 (1893).

Under this section declaring that after the chapter became operative, every municipality shall be governed by its provisions but that any municipality might within twelve months, "elect not to come under the provisions hereof," power was given municipalities affirmatively to accept the provisions of the chapter and be governed thereby. Ex parte Shlomberg, 70 Miss. 47, 11 So. 721 (1892).

CHAPTER 17

General Powers

Sec.
21-17-1. General grant of powers.
21-17-3. Exercise of powers.
21-17-5. Powers of governing authorities.
21-17-7. Appropriation of funds.
21-17-9. Amendment of municipal charter at behest of governing authority.
21-17-11. Amendment of municipal charter at behest of electorate.
21-17-13. Applicability of particular sections.
21-17-15. Establishment of fiscal or financial department in certain municipalities; authority of director.
21-17-17. Authority to set regular meeting dates.
21-17-19. Publication of substance of public measure or amendment; content; full text to be posted.

§ 21-17-1. General grant of powers.

(1) Every municipality of this state shall be a municipal corporation and shall have power to sue and be sued; to purchase and hold real estate, either within or without the corporate limits, for all proper municipal purposes, including parks, cemeteries, hospitals, schoolhouses, houses of correction, waterworks, electric lights, sewers and other proper municipal purposes; to purchase and hold personal property for all proper municipal purposes; to sell or dispose of personal property or real property owned by it consistent with Section 17-25-25; to acquire equipment and machinery by lease-purchase agreement and to pay interest thereon, if contracted, when needed for proper municipal purposes; and to sell and convey any real property owned by it, and make such order respecting the same as may be deemed conducive to the best interest of the municipality, and exercise jurisdiction over the same.

(2)(a) In case any of the real property belonging to a municipality shall cease to be used for municipal purposes, the governing authority of the municipality may sell, convey or lease the same on such terms as the municipal authority may elect. In case of a sale on a credit, the municipality shall charge appropriate interest as contracted and shall have a lien on the same for the purchase money, as against all persons, until paid and may enforce the lien as in such cases provided by law. The deed of conveyance in such cases shall be executed in the name of the municipality by the governing authority of the municipality pursuant to an order entered on the minutes. In any sale or conveyance of real property, the municipality shall retain all mineral rights that it owns, together with the right of ingress and egress to remove same. Except as otherwise provided in this section, before any such lease, deed or conveyance is executed, the governing authority of the municipality shall publish at least once each week for three (3) consecutive weeks, in a public newspaper of the municipality in which the real property is located, or if no newspaper be published as such, then in a newspaper having general circulation therein, the intention to lease or sell, as the case may be, the municipally owned real property and to accept sealed competitive bids for the leasing or sale. The governing authority of the municipality shall thereafter accept bids for the lease or sale and shall award the lease or sale to the highest bidder in the manner provided by law. However, whenever the governing authority of the municipality shall find and determine, by resolution duly and lawfully adopted and spread upon its minutes (i) that any municipally owned real property is no longer needed for municipal or related purposes and is not to be used in the operation of the municipality, (ii) that the sale of such property in the manner otherwise provided by law is not necessary or desirable for the financial welfare of the municipality, and (iii) that the use of such property for the purpose for which it is to be sold, conveyed or leased will promote and foster the development and improvement of the community in which it is located and the civic, social, educational, cultural, moral, economic or industrial welfare thereof, the governing authority of the municipality shall be authorized and empowered, in its discretion, to sell, convey or lease same for any of the purposes set forth herein without having to advertise for and accept competitive bids.

(b) In any case in which a municipality proposes to sell, convey or lease real property under the provisions of this subsection (2) without advertising for and accepting competitive bids, the governing authority may sell, convey or lease the property as follows:

(i) Consideration for the purchase, conveyance or lease of the property shall be not less than the average of the fair market price for such property as determined by at least two (2) professional property appraisers selected by the municipality and approved by the purchaser or lessee. Appraisal fees shall be shared equally by the municipality and the purchaser or lessee;

(ii) The governing authority of a municipality may contract for the professional services of a Mississippi licensed real estate broker to assist the municipality in the marketing and sale or lease of the property, and may provide the broker reasonable compensation for services rendered to be paid from the sale or lease proceeds. The reasonable compensation shall not exceed the usual and customary compensation for similar services within the municipality; or

(iii) The governing authority of a municipality may lease property of less than one thousand five hundred (1,500) square feet to any person or legal entity by having two (2) appraisals establish the fair market value of the lease, and on such other terms and conditions as the parties may agree, such lease being lawfully adopted and spread upon its official minutes.

(3) Whenever the governing authority of the municipality shall find and determine by resolution duly and lawfully adopted and spread upon the minutes that municipally owned real property is not used for municipal purposes and therefore surplus as set forth in subsection (2) of this section:

(a)(i) Except as otherwise provided in subparagraph (ii) of this paragraph (a), the governing authority may donate such lands to a bona fide not-for-profit civic or eleemosynary corporation organized and existing under the laws of the State of Mississippi and granted tax-exempt status by the Internal Revenue Service and may donate such lands and necessary funds related thereto to the public school district in which the land is situated for the purposes set forth herein. Any deed or conveyance executed pursuant hereto shall contain a clause of reverter providing that the bona fide not-for-profit corporation or public school district may hold title to such lands only so long as they are continued to be used for the civic, social, educational, cultural, moral, economic or industrial welfare of the community, and that title shall revert to the municipality in the event of the cessation of such use for a period of two (2) years. In any such deed or conveyance, the municipality shall retain all mineral rights that it owns, together with the right of ingress and egress to remove same;

(ii) If the governing authority of a municipality with a total population of greater than forty thousand (40,000) but not more than forty-two thousand five hundred (42,500) according to the 2010 federal decennial census, donates real property to a bona fide not-for-profit civic or eleemosynary corporation and such civic or eleemosynary corporation commits Two Million Dollars ($2,000,000.00) to renovate or make capital improvements to the property by an agreement between a certain state institution of higher learning and the civic or eleemosynary corporation, then the clause of reverter required by this paragraph shall provide that title of such real property shall revert 1. to the bona fide not-for-profit civic or eleemosynary corporation, if a certain state institution of higher learning ceases to use the property for the purposes required by this paragraph (a) for donated lands, or 2. to the municipality, if a certain state institution of higher learning ceases to use the property for the purposes required by this paragraph (a) and the not-for-profit civic or eleemosynary corporation or its successor ceases to exist;

(b)(i) The governing authority may donate such lands to a bona fide not-for-profit corporation (such as Habitat for Humanity) which is primarily engaged in the construction of housing for persons who otherwise can afford to live only in substandard housing. In any such deed or conveyance, the municipality shall retain all mineral rights that it owns, together with the right of ingress and egress to remove same;

(ii) In the event the governing authority does not wish to donate title to such lands to the bona fide not-for-profit civic or eleemosynary corporation, but wishes to retain title to the lands, the governing authority may lease the lands to a bona fide not-for-profit corporation described in paragraph (a) or this paragraph (b) for less than fair market value;

(c) The governing authority may donate any municipally owned lot measuring twenty-five (25) feet or less along the frontage line as follows: the governing authority may cause the lot to be divided in half along a line running generally perpendicular to the frontage line and may convey each one-half (½) of that lot to the owners of the parcels laterally adjoining the municipally owned lot. All costs associated with a conveyance under this paragraph (c) shall be paid by the person or entity to whom the conveyance is made. In any such deed or instrument of conveyance, the municipality shall retain all mineral rights that it owns, together with the right of ingress and egress to remove same;

(d) Nothing contained in this subsection (3) shall be construed to prohibit, restrict or to prescribe conditions with regard to the authority granted under Section 17-25-3.

(4) Every municipality shall also be authorized and empowered to loan to private persons or entities, whether organized for profit or nonprofit, funds received from the United States Department of Housing and Urban Development (HUD) under an urban development action grant or a community development block grant under the Housing and Community Development Act of 1974 (Public Law 93-383), as amended, and to charge interest thereon if contracted, provided that no such loan shall include any funds from any revenues other than the funds from the United States Department of Housing and Urban Development; to make all contracts and do all other acts in relation to the property and affairs of the municipality necessary to the exercise of its governmental, corporate and administrative powers; and to exercise such other or further powers as are otherwise conferred by law.

(5)(a) The governing authority of any municipality may establish an employer-assisted housing program to provide funds to eligible employees to be used toward the purchase of a home. This assistance may be applied toward the down payment, closing costs or any other fees or costs associated with the purchase of a home. The housing assistance may be in the form of a grant, forgivable loan or repayable loan. The governing authority of a municipality may contract with one or more public or private entities to provide assistance in implementing and administering the program and shall adopt rules and regulations regarding the eligibility of a municipality for the program and for the implementation and administration of the program. However, no general funds of a municipality may be used for a grant or loan under the program.

(b) Participation in the program established under this subsection (5) shall be available to any eligible municipal employee as determined by the governing authority of the municipality. Any person who receives financial assistance under the program must purchase a house and reside within certain geographic boundaries as determined by the governing authority of the municipality.

(c) If the assistance authorized under this subsection (5) is structured as a forgivable loan, the participating employee must remain as an employee of the municipality for an agreed upon period of time, as determined by the rules and regulations adopted by the governing authority of the municipality, in order to have the loan forgiven. The forgiveness structure, amount of assistance and repayment terms shall be determined by the governing authority of the municipality.

(6) The governing authority of any municipality may contract with a private attorney or private collection agent or agency to collect any type of

delinquent payment owed to the municipality, including, but not limited to, past-due fees, fines and other assessments, or with the district attorney of the circuit court district in which the municipality is located to collect any delinquent fees, fines and other assessments. Any such contract debt may provide for payment contingent upon successful collection efforts or payment based upon a percentage of the delinquent amount collected; however, the entire amount of all delinquent payments collected shall be remitted to the municipality and shall not be reduced by any collection costs or fees. Any private attorney or private collection agent or agency contracting with the municipality under the provisions of this subsection shall give bond or other surety payable to the municipality in such amount as the governing authority of the municipality deems sufficient. Any private attorney with whom the municipality contracts under the provisions of this subsection must be a member in good standing of The Mississippi Bar. Any private collection agent or agency with whom the municipality contracts under the provisions of this subsection must meet all licensing requirements for doing business in the State of Mississippi. Neither the municipality nor any officer or employee of the municipality shall be liable, civilly or criminally, for any wrongful or unlawful act or omission of any person or business with whom the municipality has contracted under the provisions of this subsection. The Mississippi Department of Audit shall establish rules and regulations for use by municipalities in contracting with persons or businesses under the provisions of this subsection. If a municipality uses its own employees to collect any type of delinquent payment owed to the municipality, then from and after July 1, 2000, the municipality may charge an additional fee for collection of the delinquent payment provided the payment has been delinquent for ninety (90) days. The collection fee may not exceed twenty-five percent (25%) of the delinquent payment if the collection is made within this state and may not exceed fifty percent (50%) of the delinquent payment if the collection is made outside this state. In conducting collection of delinquent payments, the municipality may utilize credit cards or electronic fund transfers. The municipality may pay any service fees for the use of such methods of collection from the collection fee, but not from the delinquent payment. There shall be due to the municipality from any person whose delinquent payment is collected under a contract executed as provided in this subsection an amount, in addition to the delinquent payment, of not to exceed twenty-five percent (25%) of the delinquent payment for collections made within this state, and not to exceed fifty percent (50%) of the delinquent payment for collections made outside of this state.

(7) In addition to such authority as is otherwise granted under this section, the governing authority of any municipality may expend funds necessary to maintain and repair, and to purchase liability insurance, tags and decals for, any personal property acquired under the Federal Excess Personal Property Program that is used by the local volunteer fire department.

(8) In addition to the authority to expend matching funds under Section 21-19-65, the governing authority of any municipality, in its discretion, may

expend municipal funds to match any state, federal or private funding for any program administered by the State of Mississippi, the United States government or any nonprofit organization that is exempt under 26 USCS Section 501(c)(3) from paying federal income tax.

(9) The governing authority of any municipality that owns and operates a gas distribution system, as defined in Section 21-27-11(b), and the governing authority of any public natural gas district are authorized to contract for the purchase of the supply of natural gas for a term of up to ten (10) years with any public nonprofit corporation which is organized under the laws of this state or any other state.

(10) The governing authority of any municipality may perform and exercise any duty, responsibility or function, may enter into agreements and contracts, may provide and deliver any services or assistance, and may receive, expend and administer any grants, gifts, matching funds, loans or other monies, in accordance with and as may be authorized by any federal law, rule or regulation creating, establishing or providing for any program, activity or service. The provisions of this subsection shall not be construed as authorizing any municipality or the governing authority of such municipality to perform any function or activity that is specifically prohibited under the laws of this state or as granting any authority in addition to or in conflict with the provisions of any federal law, rule or regulation.

(11)(a) In addition to such authority as is otherwise granted under this section, the governing authority of a municipality, in its discretion, may sell, lease, donate or otherwise convey property to any person or legal entity without public notice, without having to advertise for and accept competitive bids and without appraisal, with or without consideration, and on such terms and conditions as the parties may agree if the governing authority finds and determines, by resolution duly and lawfully adopted and spread upon its official minutes:

(i) The subject property is real property acquired by the municipality:

1. By reason of a tax sale;
2. Because the property was abandoned or blighted; or
3. In a proceeding to satisfy a municipal lien against the property;

(ii) The subject property is blighted and is located in a blighted area;

(iii) The subject property is not needed for governmental or related purposes and is not to be used in the operation of the municipality;

(iv) That the sale of the property in the manner otherwise provided by law is not necessary or desirable for the financial welfare of the municipality; and

(v) That the use of the property for the purpose for which it is to be conveyed will promote and foster the development and improvement of the community in which it is located or the civic, social, educational, cultural, moral, economic or industrial welfare thereof; the purpose for which the property is conveyed shall be stated.

(b) Any deed or instrument of conveyance executed pursuant to the authority granted under this subsection shall contain a clause of reverter providing that title to the property will revert to the municipality if the person or entity to whom the property is conveyed does not fulfill the purpose for which the property was conveyed and satisfy all conditions imposed on the conveyance within two (2) years of the date of the conveyance.

(c) In any such deed or instrument of conveyance, the municipality shall retain all mineral rights that it owns, together with the right of ingress and egress to remove same.

(12) The governing authority of any municipality may enter into agreements and contracts with any housing authority, as defined in Section 43-33-1, to provide extra police protection in exchange for the payment of compensation or a fee to the municipality.

(13) The governing authority of any municipality may reimburse the cost of an insured's deductible for an automobile insurance coverage claim if the claim has been paid for damages to the insured's property arising from the negligence of a duly authorized officer, agent, servant, attorney or employee of the municipality in the performance of his or her official duties, and the officer, agent, servant, attorney or employee owning or operating the motor vehicle is protected by immunity under the Mississippi Tort Claims Act, Section 11-46-1 et seq.

(14) The powers conferred by this section shall be in addition and supplemental to the powers conferred by any other law, and nothing contained in this section shall be construed to prohibit, or to prescribe conditions concerning, any practice or practices authorized under any other law.

SOURCES: Codes, 1892, § 2923; 1906, § 3314; Hemingway's 1917, § 5811; 1930, § 2391; 1942, § 3374-112; Laws, 1950, ch. 491, § 112; Laws, 1957, Ex. ch. 13, § 4; Laws, 1960, ch. 425; Laws, 1966, ch. 592, § 1; Laws, 1980, ch. 408; Laws, 1981, ch. 388, § 1; Laws, 1982, ch. 444; Laws, 1992, ch. 335 § 1; Laws, 1993, ch. 455, § 2; Laws, 1994, ch. 639, § 1; Laws, 1995, ch. 593, § 1; Laws, 1998, ch. 452, § 1; Laws, 1999, ch. 392, § 1; Laws, 2000, ch. 515, § 3; Laws, 2001, ch. 590, § 1; Laws, 2003, ch. 483, § 4; Laws, 2004, ch. 440, § 1; Laws, 2004, ch. 560, § 2; Laws, 2007, ch. 487, § 1; Laws, 2007, ch. 538, § 1; Laws, 2010, ch. 415, § 1; Laws, 2010, ch. 433, § 1; Laws, 2010, ch. 517, § 4; Laws, 2011, ch. 534, § 1; Laws, 2012, ch. 402, § 1; Laws, 2012, ch. 499, § 3; Laws, 2013, ch. 364, § 3; Laws, 2014, ch. 370, § 1; Laws, 2014, ch. 432, § 2, eff from and after July 1, 2014.

Joint Legislative Committee Note — Section 1 of ch. 440 Laws of 2004, effective from and after July 1, 2004 (approved April 28, 2004), amended this section. Section 2 of ch. 560, Laws of 2004, effective from and after July 1, 2004 (approved May 14, 2004), also amended this section. As set out above, this section reflects the language of Section 2 of ch. 560, Laws of 2004, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Section 1 of ch. 487 Laws of 2007, effective from and after July 1, 2007 (approved March 27, 2007), amended this section. Section 1 of ch. 538, Laws of 2007, effective July 1, 2007 (approved April 18, 2007), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 538, Laws of 2007, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation inserted the word "and" following the semicolon in the last item in the list of municipal powers in subsection (1). The Joint Committee ratified the correction at its July 22, 2010, meeting.

Section 4 of Chapter 517, Laws of 2010, effective July 1, 2010 (approved April 14, 2010), amended this section. Section 1 of Chapter 415, Laws of 2010, effective upon passage (approved March 17, 2010), and Section 1 of Chapter 433, Laws of 2010, effective July 1, 2010 (approved March 25, 2010), also amended this section. As set out above, this section reflects the language of Section 4 of Chapter 517, Laws of 2010, which contains language that specifically provides that it supersedes § 21-17-1 as amended by Laws of 2010, chs. 415 and 433.

Section 1 of Chapter 402, Laws of 2012, effective July 1, 2012 (approved April 18, 2012) amended this section. Section 3 of Chapter 497, Laws of 2012, effective July 1, 2012 (approved April 30, 2012) also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 16, 2012, meeting of the Committee.

Section 1 of ch. 370, Laws of 2014, effective July 1, 2014, amended this section. Section 2 of ch. 432, Laws of 2014, effective from and after July 1, 2014, also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 24, 2014, meeting of the Committee.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in (3)(a)(ii) and (b)(ii) by, in (3)(a)(ii), deleting the comma following "donates real property," substituting "shall revert 1. to the bona fide not-for-profit civic or eleemosynary corporation, if a certain state institution of higher learning ceases to use the property for the purposes required by this paragraph (a) for donated lands, or 2." for "shall revert (1) to the bona fide not-for-profit civic or eleemosynary corporation, if a certain state institution of higher learning ceases to use the property for the purposes required by this paragraph (a) for donated lands or (2)," and substituting the semicolon for a period at the end, and in (3)(b)(ii), inserting "this paragraph" following "described in paragraph (a) or." The Joint Committee ratified these corrections at its July 24, 2014, meeting.

Amendment Notes — The first 2014 amendment (ch. 370) deleted the last sentence in (12), which read, "This subsection shall stand repealed from and after July 1, 2014."

The second 2014 amendment (ch. 432) added (13), and redesignated former (13) as (14).

Cross References — Suits against municipalities, see §§ 11-45-1 et seq.

Statutes of limitation being in favor of state and when running commences against plaintiff, see § 15-1-51.

Authority in zoning matters, see §§ 17-1-3, 17-1-5.

Uniformity and consistency in zoning regulations of county and municipality, see § 17-1-3.

Municipality approving a vacation or alteration of map or plat pursuant to the provisions of § 17-1-23 is exempt from sale of surplus real property provisions of this section, see § 17-1-23.

Accepting subdivision street before subdivision completed, see § 17-1-25.

Advertising resources, see §§ 17-3-1 et seq.

Establishing convention centers, see §§ 17-3-9 through 17-3-19.

Leasing municipal lands for oil, gas and mineral exploration and development, see §§ 17-9-1 et seq.

Uniform system for issuance of negotiable notes or certificates of indebtedness, see §§ 17-21-51 et seq.

Governing authorities of municipalities authorized to enter into collection agreements with private attorney, collection agency or others to collect cash appearance bonds from certain defendants, see § 17-25-21.

Prescribed corporate names of municipalities, see § 21-1-5.

Judicial notice being taken of the powers of municipality, see § 21-1-11.

Authorities appropriating funds for municipal expenses, see § 21-17-7.

Collection and disposal of garbage and rubbish, see § 21-19-1.

Power to establish hospitals, workhouses, and houses of correction, see § 21-19-5.

Municipal authorities enacting police regulations, see § 21-19-15.

Enacting fire regulations, see § 21-19-21.

Municipalities not having the power to change Sunday laws, see § 21-19-39.

Contributing to federal food stamp program, see § 21-19-41.

Expenditures for recreational and industrial development, see § 21-19-45.

Municipal police and police departments, see §§ 21-21-1 et seq.

Establishment and maintenance of fire departments, see §§ 21-25-3 et seq.

Establishment, maintenance and operation of waterworks, see § 21-27-7.

Leasing or selling land on which redemption from municipal tax sale has expired, see § 21-33-75.

Powers of municipalities over harbors and wharves, see § 21-37-15.

Exercise of eminent domain by municipalities, see § 21-37-47.

Granting of lands to state by municipalities, see § 29-1-15.

Requirement that resident labor be used on public works, see § 31-5-17.

Resident contractors being preferred by school and water supply district authorities, see § 31-7-47.

Acquisition of public buildings, facilities, and equipment through rental contracts, see §§ 31-8-1 et seq.

Support of national guard located in municipality, see § 33-1-3.

Civil defense law, see §§ 33-15-1 et seq.

Donating land to United States for veterans' hospital or soldiers' home, see § 35-3-1.

Purchasing land for United States for use as veterans' hospital or soldiers' home, see § 35-3-3.

Providing quarters for veterans' organizations, see § 35-3-5.

Establishment of community hospitals and health centers, see § 41-13-15.

Joint operation with county of public ambulance service, see §§ 41-55-1 et seq.

Authority to adopt ordinances relating to individual onsite wastewater disposal systems, see § 41-67-15.

Powers under urban renewal law, see § 43-35-15.

Delegation to urban renewal agency of authority concerning municipal parking, see §§ 43-35-201 et seq.

Designation by municipalities of areas for development and redevelopment, see §§ 43-35-301 et seq.

Authority of municipalities relating to community development grants, see § 43-35-503.

Organization of flood and drainage control districts, see §§ 51-35-301 et seq.

Cooperative development and operation with county of oil and gas accumulations, see § 53-3-51.

Additional powers of municipalities to acquire, own and lease projects for the purpose of promoting industry and trade, see § 57-3-9.

Authority to establish standard industrial parks and districts, see § 57-5-17.

Right of eminent domain in acquisition of land for standard industrial park, see § 57-5-21.

Sale or development of airport lands or other lands for industrial purposes, see §§ 57-7-1 et seq.

Authorization to acquire land for port and terminal facilities, see § 59-1-37.

Powers of municipality with harbor that is a port of entry, see § 59-3-1.

Airport authorities law, see §§ 61-3-1 et seq.

Municipal airport law, see §§ 61-5-1 et seq.

Support of airport facilities for state university and colleges, see § 61-5-71.

Procuring airports, see § 61-5-75.

Local parking and traffic regulations, see § 63-3-211.

Contributing funds to aid construction of state highways, see § 65-1-81.

Prohibiting construction of any public work not supervised by registered professional engineer, see § 73-13-45.

Illegality of combination to prevent bidding on public works' contracts, see §§ 75-21-15 et seq.

Definitions in public utilities' regulations, see §§ 77-3-1 et seq.

Authority to engage in power development, see §§ 77-5-301 et seq. and 77-5-401 et seq.

Establishment of municipal fire protection fund by state for use by municipalities to improve fire departments, see § 83-1-37.

Conditions when quitclaim deed issued by municipality, see § 89-1-25.

Federal Aspects — Housing and Community Development Act of 1974 (Public Law 93-383), see § 42 USCS § 5301 et seq.

JUDICIAL DECISIONS

1. In general.
2. Tort liability.
3. Property rights.
4. Contracts.
5. Suits by or against municipal corporation.
6. Under former law.

1. In general.

H.B. 1671, Reg. Sess. (Miss. 2006), was a private law which enabled the city to obtain municipal parking facilities in exchange for the conveyance of air and development rights; the last sentences of sections 3 and 4 were unconstitutional under Miss. Const. Art. IV, § 87, as exempting the bill from compliance with Miss. Code Ann. §§ 21-17-1 and 31-7-13 and were not merely procedural and minor. Oxford Asset Partners, LLC v. City of Oxford, 970 So. 2d 116 (Miss. 2007).

City could convey to developer land which it had reserved for drainage, and since the transaction in which the conveyance had been made was entered into the city's minute book, the conveyance was valid. Modling v. Bailey Homes & Ins., 490 So. 2d 887 (Miss. 1986).

The governing body of a municipality possesses only such authority as is conferred upon it by its charter or by general statutes, together with such powers as are necessary to give effect to the powers granted. Mayor & Bd. of Aldermen v. Engle, 211 Miss. 380, 51 So. 2d 564 (1951).

A city can do and perform all acts for which it has authority under its charter from the State from which it derives its existence, except such as may be in conflict with the Constitution. City of Indianola v. Sunflower County, 209 Miss. 116, 46 So. 2d 81 (1950).

Powers delegated by the Legislature to municipalities are intended to be exercised in conformity to, and consistent with the general laws of the State, and are to be construed most strongly against a power or right claimed but not clearly given. King v. City of Louisville, 207 Miss. 612, 42 So. 2d 813 (1949).

Municipal powers are only those expressly conferred by statute, and necessarily implied. Such powers belong to the municipality and not to its officers. Tullos v. Town of Magee, 181 Miss. 288, 179 So. 557 (1938).

Municipalities can exercise no powers except such as are delegated to them by the state expressly or by necessary implication. Steitenroth v. City of Jackson, 99 Miss. 354, 54 So. 955 (1911).

A municipality operating under the Code Chapter on municipalities is restricted in its powers to those conferred by said chapter. City of Hazlehurst v. Mayes, 96 Miss. 656, 51 So. 890 (1910).

Individuals dealing with a municipality are required to take notice of its charter limitations. Edwards Hotel & City R. Co. v. City of Jackson, 96 Miss. 547, 51 So. 802 (1910).

A municipality cannot be allowed to exercise powers not clearly given it by its charter. Crittenden v. Town of Booneville, 92 Miss. 277, 45 So. 723, 131 Am. St. R. 518 (1908).

2. Tort liability.

The owner of a business which was destroyed by fire was not collaterally estopped from bringing a negligence action against the city by a previous judgment in favor of the city in a negligence action brought by another business which was destroyed in the same fire. Weaver v. City of Pascagoula, 527 So. 2d 651 (Miss. 1988).

A municipality is not authorized to require written notice to the city of a defect in a sidewalk prior to an accident as a condition precedent to liability. City of Meridian v. Raley, 238 Miss. 304, 118 So. 2d 342 (1960).

A city is liable for injuries resulting from negligence in the maintenance of a public park or playground which it has established under the authority of the statute. Harllee v. City of Gulfport, 120 F.2d 41 (5th Cir. 1941).

A city fireman engaged in the performance of a governmental duty of the city and who is injured cannot recover from the city for an injury caused by the negligence of his superior in the same service. City of Hattiesburg v. Geigor, 118 Miss. 676, 79 So. 846 (1918) but see White v. City of Tupelo, 462 So. 2d 707 (Miss. 1984).

3. Property rights.

City did not improperly use Miss. Code Ann. § 57-7-1 to bypass the bid process in Miss. Code Ann. § 21-17-1 because the powers in § 21-17-1(13) were supplemental to other laws. Ball v. Mayor & Bd. of Aldermen, 983 So. 2d 295 (Miss. 2008).

City's sale of property for $500,000 was reasonable because the goal of economic development was not to receive the highest price; a sale or lease under Miss. Code Ann. § 57-7-1 was for good and valuable consideration, but not necessarily for fair market value. Ball v. Mayor & Bd. of Aldermen, 983 So. 2d 295 (Miss. 2008).

The plaintiff association did not have a vested property interest in opening and closing graves at a cemetery owned by the defendant city and, therefore, the city acted within its authority when it chose to rescind the order which created the association and to open and close graves at the cemetery itself. Hollywood Cemetery Ass'n v. Board of Mayor & Selectmen, 760 So. 2d 715 (Miss. 2000).

In a suit by taxpayers and landowners against the city to enjoin construction of a municipal building on property theretofore purchased by the city, proof that the property was a public park by common-law dedication was not clear, satisfactory and unequivocal where the city had used parts of the tract for purposes inconsistent with park purposes, leased parts of the property to private interests, sold one of the lots, and only a fraction of the original tract was still in use as a park; rather, it was as reasonable to infer that the city intended to use the tract for park purposes only for so long as it was not needed for other municipal purposes or only for so long as the land was suitable for park purposes. Thomas v. State, 292 So. 2d 177 (Miss. 1974).

Land gratuitously conveyed to a municipal corporation with the restriction that it "shall be used for public purposes" may not be leased to a private individual for use for non-public purposes. Spears v. Spears, 266 So. 2d 910 (Miss. 1972).

The definitions of municipal authority set forth in this section [Code 1942, § 3374-112] constitute the equivalent of an express grant of power to purchase equipment necessary to mix paving materials to be used on the city streets. Webb v. City of Meridian, 195 So. 2d 832 (Miss. 1967).

This section gives the broad power to a municipality to purchase and hold real estate and personal property; under such a broad power, it is a general rule of interpretation that there is embraced and included the lesser power to lease, unless there is in the very nature of the use and control of the property an implied inhibition against a lease. Accordingly, a municipality was held liable for the reasonable use of a fire engine where the contract of sale thereof was invalid for failure to follow statutory requirements. American-LaFrance, Inc. v. City of Phila., 183 Miss. 207, 184 So. 620 (1938).

It is not improper for a municipality to construct or permit to be constructed in a park a statue of one of the donors who gave the park to the municipality. Brahan v. City of Meridian, 111 Miss. 30, 71 So. 170 (1916).

A city is not authorized under this section [Code 1942, § 3374-112] to issue bonds to purchase real estate. City of Hazlehurst v. Mayes, 96 Miss. 656, 51 So. 890 (1910).

The use of a ditch by a city for more than ten years to carry off water falling upon a certain area acquires by prescription a right to maintain the ditch for the same character of service, but the city will not be thereafter allowed to change the character of service by increasing the flow of the water or enlarging the ditch. Sturges v. City of Meridian, 95 Miss. 35, 48 So. 620 (1909).

The legislature has authority and may confer power on a municipal corporation to own and operate an electric railway. Love v. Holmes, 91 Miss. 535, 44 So. 835 (1907).

4. Contracts.

The power of a municipality to contract with reference to any subject matter must either be expressly covered by its charter or by general statute, or necessarily implied therefrom. Mayor & Bd. of Aldermen v. Engle, 211 Miss. 380, 51 So. 2d 564 (1951).

This section [Code 1942, § 3374-112] does not authorize a municipality to establish an automobile testing station and engage in the business of testing automobiles, and consequently a municipality had no authority to contract for the purchase of equipment for such purpose. Davenport v. Blackmur, 184 Miss. 836, 186 So. 321 (1939).

This section [Code 1942, § 3374-112] does not authorize a municipality to employ a tax assessor in addition to the one provided by law; accordingly one who had allegedly contracted with a municipality to receive 50 per cent of all back taxes collected by him as a result of discovering and placing on the municipality's tax assessment roll any real estate due to be thereon but which had escaped assessment and taxation in the past, could not recover against a municipality since such contract was void and unenforceable. Fitzgerald v. Town of Magnolia, 183 Miss. 334, 184 So. 59 (1938).

Municipalities may make all contracts reasonably necessary and expedient to installation and maintenance of waterworks systems. Tullos v. Town of Magee, 181 Miss. 288, 179 So. 557 (1938).

Town could make contract for employment of operator of water pump for stipulated compensation, if reasonably necessary and expedient to waterworks system. Tullos v. Town of Magee, 181 Miss. 288, 179 So. 557 (1938).

Employment of operator of pump for life with right of succession in operator's lineal heirs, held enforceable only during term of officers who made contract. Tullos v. Town of Magee, 181 Miss. 288, 179 So. 557 (1938).

An instance where a city depository executed a bond not signed by the surety company as the law provided, in which it is held that the depository and surety on its bond cannot avail themselves of the fact that the bond was illegal. Perkins v. State, 130 Miss. 512, 94 So. 460 (1922).

A city operating a public service in electric lights, water, etc., cannot require an applicant for such service to pay an account of another at the place applied for. Ginnings v. Meridian Waterworks Co., 100 Miss. 507, 56 So. 450, Am. Ann. Cas. 1914A,540 (1911).

5. Suits by or against municipal corporation.

Where the officers of a municipality had proper notice of an application for a writ of mandamus to compel the payment of a judgment and the levy of taxes in the town and the judgment by default is taken against the town, a mere impression in the minds of the officers that the suit was for the purpose of making a judgment final which had been previously recovered is no reason for opening the case. Town of Jonestown v. Ganong, 97 Miss. 67, 52 So. 579 (1910), error overruled 97 Miss. 67, 52 So. 692.

It is not necessary that the claim should first be presented to a municipality for allowance or rejection before suit may be instituted thereon. Pylant v. Town of Purvis, 87 Miss. 433, 40 So. 7 (1906).

Where a claim against a municipality is barred by limitation it ceases to be a debt and it is the duty of the municipality to plead the statute of limitations. Trowbridge v. Schmidt, 82 Miss. 475, 34 So. 84 (1903).

An allowance by municipal authorities of a demand barred by limitation is without consideration and ultra vires, and mandamus will not lie to compel the issuance of a warrant or to complete an imperfect one made on such an allowance. Trowbridge v. Schmidt, 82 Miss. 475, 34 So. 84 (1903).

A municipality cannot against its objection be proceeded against by attachment in chancery so as to bind its indebtedness to a non-resident defendant. Clarksdale Compress & Storage Co. v. W.R. Caldwell Co., 80 Miss. 343, 31 So. 790 (1902).

6. Under former law.

An instance under a former statute where a state revenue agent might sue a county for the use and benefit of a city therein. Robertson v. Monroe County, 118 Miss. 541, 79 So. 187 (1918).

A city is liable for the negligence of a driver of a city cart engaged in clearing trash and filth for the city. City of Pass Christian v. Fernandez, 100 Miss. 76, 56 So. 329 (1911), but see White v. City of Tupelo, 462 So. 2d 707 (Miss. 1984).

If a municipality pays a judgment against it as garnishee and takes an assignment of the judgment, it is nevertheless liable to the judgment debt, or if the debt garnished was exempt, as monthly wages of the head of a family, and the municipality has failed to suggest the claim of exemption, by which the judgment debtor was deprived of the opportunity to interplead. City of Laurel v. Turner, 80 Miss. 530, 31 So. 965 (1902).

Unless subjected thereto by statute, it is not liable to suit by garnishment or otherwise for debts arising from its exercise of governmental functions. Dollman v. Moore, 70 Miss. 267, 12 So. 23 (1892).

A plaintiff or complainant seeking to garnish a municipality must show that its debt to defendant was contracted in its private capacity, and must establish the nature of the transaction and the facts which render it amenable to the process. Dollman v. Moore, 70 Miss. 267, 12 So. 23 (1892).

ATTORNEY GENERAL OPINIONS

Municipal Home Rule Act did not apply where City of Hernando, Mississippi planned to purchase existing building and land, to be subsequently leased to industrial prospect with lease containing option to purchase, as acquisition of property for industrial development had been provided for by general law. Douglas, March 2, 1990, A.G. Op. #89-950.

Municipal governing authorities may in their discretion reject all bids for sale of surplus property after it has been advertised for sale; as additional precaution, city may insert language in bid advertisements reserving right to reject any and all bids, but such is not required. May, Oct. 4, 1990, A.G. Op. #90-0735.

Statute expressly authorizes donation of municipally owned real property to nonprofit civic organization provided proper factual determinations are made by governing authorities; municipality may lease real property to civic not for profit group for nominal amount for community events. May, Oct. 31, 1990, A.G. Op. #90-0814.

The manufacture and sale of Christmas ornaments to other cities and individuals is a business venture, and the use of free labor provided by prison inmates to manufacture items gives a municipal subsidized venture an unfair advantage in the private sector. Shepard, Dec. 18, 1991, A.G. Op. #91-0943.

Governing authorities of municipalities may donate property which has ceased to be used for municipal purposes to bona fide not for profit civic or eleemosynary corporation; deed or instrument of conveyance for transaction must contain clause of reverter providing that property will revert to municipality in event of cessation of use for purposes set forth in statute for period of two years, and city may not subordinate reversionary interest to bank lien. Belk, July 8, 1992, A.G. Op. #92-0525.

Municipalities have no authority to require private businesses or developers to post performance or surety bond to assure completion of project in which City has no financial interest. Rafferty, August 27, 1992, A.G. Op. #92-0161.

Section does not apply to sale or disposal of property in urban renewal area. Galloway, Sept. 10, 1992, A.G. Op. #92-0670.

There is no apparent general authority empowering city to regulate eating and nonalcoholic drinking on public streets except to extent such is related to public health and/or safety concerns. Williams, Sept. 23, 1992, A.G. Op. #92-0629.

Municipality may abandon easement for utility lines and drainage by order spread upon minutes, and property will no longer be burdened by easement. Mitchell, Nov. 17, 1992, A.G. Op. #92-0849.

Municipality must comply with requirements of Miss. Code Section 21-17-1 to either lease or sell property which had ceased to be used for municipal purposes; before any lease, deed or conveyance is executed, governing authorities must advertise and accept bids in accordance with this section, and must award lease or sale to highest bidder in manner provided by law; governing authorities must make factual determinations set forth in this section in order to sell or lease municipal property without advertising and accepting competitive bids; consideration that municipality receives for sale or lease of property must be not less than average of fair market price as determined by three professional property appraisers; in case of sale on credit, municipality must charge appropriate interest and shall have lien on property for purchase money until paid. Horan, Jan. 14, 1993, A.G. Op. #92-0996.

Primary touchstone for municipal authority regarding sale, lease or conveyance of municipal real property is set out at Miss. Code Section 21-17-1. Ellis, Jan. 15, 1993, A.G. Op. #92-0986.

Since Miss. Code Section 21-17-1 contemplates payment of interest if purchase is made on credit, city will need to make finding that consideration it is to receive constitutes equivalent of sale on credit for fair market value of properties including interest. Ellis, Jan. 15, 1993, A.G. Op. #92-0986.

Governing authorities of municipality must comply with Miss. Code Section 21-17-1 to rent municipally owned land; therefore, governing authorities of municipality must advertise and accept bids to rent above described land when current lease ends; however, governing authorities may lease municipal property without advertising and accepting bids whenever governing authorities make and spread upon minutes factual findings set forth in statute, and then property may be leased for average of fair market price as determined by three property appraisers. Cossar, Apr. 14, 1993, A.G. Op. #93-0216.

Governing municipal authorities could lease municipally owned property to bona fide not for profit civic organization if governing authorities made factual determinations set forth in statute. Bardwell, June 30, 1993, A.G. Op. #93-0469.

Town may lease excess capacity of pipeline for its fair market value subject to future needs but should not lease pipeline for period to exceed four year term of Town's governing board. Rosenblatt Oct. 22, 1993, A.G. Op. #93-0646.

As matter of policy, there was no reason for Section 57-1-45 to be inapplicable to leasing or sale of Project that was initiated and financed pursuant to industrial development bond statutes where purchase of leasehold by city (utilizing proceeds of General Obligation Note) was consummated in order to market Project to an industrial user so that Project could fulfill statutory purpose of industrial development statutes; therefore, it was not necessary to comply with 21-17-1. Collins, Jan. 5, 1994, A.G. Op. #93-0991.

Section 21-17-1 was not applicable to proposed transaction where municipality has been made whole by recouping any amount previously expended. Collins, Jan. 5, 1994, A.G. Op. #93-0991.

In accordance with general grant of powers to municipality by Section 21-17-1, and authority to manage and control municipal property in its charge, City may contract with vendors for installation of ATM in city jail or any other city building. Mitchell, Jan. 12, 1994, A.G. Op. #93-0874.

Private attorney, collection agent or agency with whom municipality contracts to collect delinquent payments owed to municipality may assume full responsibility for collection of debt, including, but not limited to, initiation of legal action against debtor, as long as legal action is taken in name of municipality, debt is not assigned to collecting agency and monies collected are not reduced by any fee owed. Collins, Jan. 12, 1994, A.G. Op. #93-0913.

If 1969 lease in question was lawfully entered and fully complied with statutes in effect at time of execution of lease, any subsequent amendments to authorizing statutes would not affect validity of lease. Ellis, March 9, 1994, A.G. Op. #94-0073.

If property is no longer being used or is no longer needed for municipal purposes, city must comply with Section 21-17-1 to accomplish lease of property. Ellis, March 31, 1994, A.G. Op. #94-0177.

A municipality does not have authority to rent equipment, such as a backhoe, to private persons as a profit making venture. Odom, Aug. 15, 1997, A.G. Op. #97-0505.

While there are no specific statutory procedures for a municipality to sell its surplus personal property, it must receive fair market value for the property, and it may sell such property at a public auction. Davies, Aug. 15, 1997, A.G. Op. #97-0510.

A municipality does not have the authority to expend funds for a market research study to ascertain the feasibility of a nonprofit corporation such as the YMCA. Stockton, March 6, 1998, A.G. Op. #98-0110.

A city may not donate real property directly to a church. Brabham, May 1, 1998, A.G. Op. #98-0198.

Assuming that the proper factual determinations can be made, a city can dispose of property by sale or lease for the average fair market price as determined by three professional property appraisers without advertising or competitive bidding; in such manner, a city can sell or lease the property directly to the purchaser or lessee of its choosing. Brabham, May 1, 1998, A.G. Op. #98-0198.

Providing banking services to the public is not a proper municipal purpose, and there is no authority for the purchase or lease-purchase of an automatic teller machine to be owned and serviced by a municipality. Horne, August 28, 1998, A.G. Op. #98-0511.

In view of the fact that surplus property owned by a city was a protected Mississippi landmark, the city could place covenants on the property restricting the use of the property to the uses set out in the notice of sale and such covenants could continue forever; further, the city could take into consideration, in awarding the bid for the sale of the property, the proposed use of the property, the scope of the proposed rehabilitation of the structure, and the time period for beginning and completing rehabilitation efforts as well as the monetary bid offered. Thomas, August 28, 1998, A.G. Op. #98-0517.

There is no authority which would authorize a municipality to dispose of real property, by sale or lease, for less than fair market value for use by the United States Army Corps of Engineers. Thomas, September 10, 1998, A.G. Op. #98-0518.

Municipal governing authorities must follow the procedures set forth in this section to lease surplus real property which was donated to the municipality. Campbell, November 6, 1998, A.G. Op. #98-0659.

The city may lease space in a municipal building to private businesses if the city finds that the office space is not needed for municipal purposes; however, the municipality must follow the procedures in the statute to lease office space in a municipal building and, therefore, must either follow the first procedure in the statute and advertise the property or the second procedure and lease the property for the average of three appraisals if the city makes the three factual findings in the statute. Campbell, November 6, 1998, A.G. Op. #98-0659.

A municipality may convey property through a lease/purchase agreement pursuant to the statute. However, a lease/purchase agreement pursuant to the statute must be for the term of the board since the statute does not authorize the governing authorities to enter into a long term lease/purchase, and such a lease/purchase agreement is voidable at the option of a subsequent board. Campbell, November 6, 1998, A.G. Op. #98-0659.

A municipality may purchase property if it is determined that the city needs such property for a proper municipal purpose. Prichard, November 13, 1998, A.G. Op. #98-0685.

The statute contains no "buy back" provision which would authorize a municipality to repurchase property which was declared surplus, consistent with fact, and sold, based on changed plans or intentions of the purchaser. Prichard, November 13, 1998, A.G. Op. #98-0685.

The statute does not address specific additional findings which must be made in the event a municipality determines it will purchase property it previously declared and sold as surplus; however, it is clear that the determination that property is needed for a proper municipal purpose must be made by the governing authorities consistent with fact, and by resolution duly and lawfully adopted and spread upon the minutes, and it is difficult to imagine that such a finding could be made, consistent with fact, without the occurrence of some events or conditions which have arisen since the same property was sold as surplus since the governing authorities were required to find, consistent with fact, that the property was no longer needed for municipal or related purposes prior to declaring it surplus. Prichard, November 13, 1998, A.G. Op. #98-0685.

There is no authority for a municipality to donate property to a church for use as a public cemetery. LeFlore, November 20, 1998, A.G. Op. #98-0644.

The governing authorities of a town may exchange real property owned by the town for real property owned by a church or a combination of real property and cash if the governing authorities follow the procedures in the statute and receive consideration which constitutes fair market value for the municipal property. LeFlore, November 20, 1998, A.G. Op. #98-0644.

A city had the authority to enter into a management contract for the operation and maintenance of a city-owned multi-educational complex since the operation of the complex was in furtherance of a proper municipal purpose. Thomas, November 25, 1998, A.G. Op. #98-0723.

The City of Jackson was authorized to proceed with a proposed sale of property to the state based on two appraisals obtained as required under state law for the purchase of property by the state. Horne, January 22, 1999, A.G. Op. #98-0806.

The governing authorities of a city could not donate a building to the Trustees of the Episcopal Diocese of Mississippi; however, if the governing authorities were to find consistent with fact and spread upon the minutes the three factual findings required by this section, they could sell the building to the Episcopal Diocese for fair market value as determined by three appraisals. Mitchell, February 12, 1999, A.G. Op. #99-0049.

There is no authority for a municipality to contract with a developer to construct a recreational park or make improvements on property in circumvention of the statutory procedures for public construction. Campbell, February 12, 1999, A.G. Op. #99-0020.

If the governing authorities follow the procedures in this section, they may award a bid to demolish a structure to a group that plans to remove and relocate the structure rather than demolish it. Thomas, March 19, 1999, A.G. Op. #99-0096.

This section applies to property where the permanent building is sold separately from the land. Thomas, March 19, 1999, A.G. Op. #99-0096.

A home in a flood plain, which the city buys through a federal grant, is real property and not personal property. Thomas, March 19, 1999, A.G. Op. #99-0096.

Even though a city intended to demolish a structure, the city could not determine that the fair market value of the structure was the estimated cost to demolish it; the fair market value was required to be determined by the appraisal process set out in this section. Thomas, March 19, 1999, A.G. Op. #99-0096.

There is no authority in this section for a city to negotiate with a buyer without following the procedures in this section to sell the property. Thomas, March 19, 1999, A.G. Op. #99-0096.

A municipality may contract with a firm to analyze the city's utility bills for improper charges and to compensate the contractor by a contingent fee based upon refunds or rebates actually received by the city pursuant to this section so long as the contract complies with the requirements of this section and any additional rules and regulations established by the Mississippi Department of Audit. Hewes, April 9, 1999, A.G. Op. #99-0137.

A city may not use funds donated by a non-profit housing development corporation to purchase an apartment complex to be used to provide public housing. Belk, May 28, 1999, A.G. Op. #99-0224.

This section did not provide authority for a city to purchase an apartment complex from HUD and to donate the property to a non-profit housing development corporation. Belk, May 28, 1999, A.G. Op. #99-0224.

The governing authorities of the City of Olive Branch may grant a franchise to the area electric power association to construct and maintain utility poles, wires and other facilities on a strip of land near the fire station on such terms and conditions as the governing authorities may elect. Snyder, August 27, 1999, A.G. Op. #99-0402.

The statute does not exclude an organization that has a religious purpose included in its mission statement, but provides that the governing authorities may donate property to an organization that is nonprofit and civic. Power, Nov. 5, 1999, A.G. Op. #99-0592.

A city could not donate municipal property to a local nonprofit Mississippi corporation by the name of Christians United of Leland for use as a recreational center, notwithstanding that the corporation had been granted tax exempt status by the Internal Revenue Service. Power, Nov. 5, 1999, A.G. Op. #99-0592.

Subsection (c) authorizes governing authorities to donate funds to the public school district for educational programs; whether a particular program is an educational program included within the curriculum of the school or is an extracurricular activity that takes place at the school is a factual question to be determined by the municipal governing authorities. Power, Nov. 5, 1999, A.G. Op. #99-0592.

A city may make a donation of funds to the city public school district, but only to the extent that such funds will be for the promotion of educational programs of the district. Reno, Dec. 10, 1999, A.G. Op. #99-0642.

The governing authorities of a municipality do not have authority to donate funds to a public school district for athletic lockers. Gabriel, Jan. 7, 2000, A.G. Op. #99-0701.

The owners of a community hospital could not convey a hospital parking lot to a nonprofit corporation as it could not be found as a matter of fact that the parking lot had ceased to be used for county purposes. Galloway, March 17, 2000, A.G. Op. #2000-0114.

The home rule statute does not allow governing authorities to create an independent commission because it provides that governing authorities may not change the form or structure of municipal government; that area of the law has been preempted by state statutes. Kimble, March 17, 2000, A.G. Op. #2000-0127.

A municipality, by and through its utility commission, may enter into contracts with parties for use of city property for antennaes, provided that the commission determines, consistent with the facts, that to do so would be in the best interest of the municipality; and, although the city may contract with a third party to solicit and manage/oversee such contracts, the final contracts must be between the city and the users. Flanagan, Jr., April 14, 2000, A.G. Op. #2000-0164.

The governing authorities of a town must comply with the statute to sell or convey property which is used as a municipal cemetery to a nonprofit organization or a church. Null, May 12, 2000, A.G. Op. #2000-0224.

There is no authority for a municipality to expend funds in order to "hold" a certain piece of property for the future benefit of a private, nonprofit organization which does not yet have other funds with which to purchase the property. Thomas, Mar. 2, 2001, A.G. Op. #01-0113.

A city could grant to a church an easement for ingress and egress across city property from one parcel of its property to another pursuant to the statute. Baum, Sept. 14, 2001, A.G. Op. #01-0551.

A municipality has authority to sell property on a credit basis, but does not have authority to jointly share a priority lien on the property with a bank. Stark, Oct. 12, 2001, A.G. Op. #01-0642.

A municipality may convey property, such as motor vehicles, to a local dealer or individual without advertising for bids, provided fair market value is received for the vehicles and may then proceed with the acquisition of property which is more suited to the needs of the municipality where the municipality has advertised for the vehicles to be traded at fair market value but all bids were refused. Gunn, Feb. 15, 2002, A.G. Op. #02-0051.

A city may hire employees to perform functions relating to the youth court with the approval of the youth court judge, if the city governing authority finds that the performance of those functions will benefit the public health, safety and welfare, pursuant to its police power and the statute. Thomas, Mar. 4, 2002, A.G. Op. #02-0095.

The governing authorities of municipalities do not have authority to donate funds to any nonprofit corporation by virtue of the fact that it is exempt under 26 USCS § 501(c)(3) from paying federal income taxes; rather, the governing authorities of municipalities may only donate funds to match other funds to specific social and community service programs of the same type and nature as those listed in the statute. Thomas, Mar. 15, 2002, A.G. Op. #02-0074.

There is no authority for the governing authorities of a municipality to make an unrestricted donation to a nonprofit corporation, such as the United Way, or for the governing authorities of a municipality to donate funds to the United Way for a computer service which will be a data base for keeping records on clients who have been helped by area churches and agencies. Thomas, Mar. 15, 2002, A.G. Op. #02-0074.

A town does not have authority pursuant to § 21-17-1 to donate real property and associated personal property to a hospital which is a 501(c)(3) not-for-profit corporation. Davies, Sept. 13, 2002, A.G. Op. #02-0351.

A town may sell property to a non-profit hospital for fair market value, following the procedures in § 21-17-1 over a period of several years so long as the town charges appropriate interest and retains a first priority lien on the property for the purchase price. Davies, Sept. 13, 2002, A.G. Op. #02-0351.

Section 21-17-1 does not apply to the sale of a public utility system under Section 21-27-33. Perkins, Nov. 1, 2002, A.G. Op. #02-0637.

A municipality may lease space in a municipal building to a nonprofit corporation pursuant to Section 21-17-1. Farmer, Dec. 20, 2002, A.G. Op. #02-0603.

A municipality had the authority to modify a purchase contract in consideration of getting a lump sum payment immediately, rather than monthly installments. Hilbun, Jan. 17, 2003, A.G. Op. #03-0013.

Although there is no authority for the governing authorities of a municipality to donate real property to nonprofit environmental organizations, governing authorities of a city may establish and create a park, including a greenway or recreational area, within municipal property and, further, the city may contract with a nonprofit organization for the operation and management of the park or greenway. Johnson, May 30, 2003, A.G. Op. 03-0272.

Prior to taking action, whether it be entering into a contract on behalf of the municipality or filing a lawsuit on behalf of the city, authorization must be given to the Mayor to take such action. Carroll, July 14, 2003, A.G. Op. 03-0325.

Municipal governing authorities should ensure that "fair value" is received for surplus real property which is sold or conveyed by the municipality. Phillips, Aug 1, 2003, A.G. Op. 03-0389.

A municipality is not prohibited from contracting with a collection agency and paying the collection agency a contingency fee based on the amount of delinquent fines collected by the agency. The contract may provide for a staggered contingency fee based on the amount collected. It should be noted that the entire amount of all delinquent payments collected shall be remitted to the municipality and shall not be reduced by any collection costs or fees. Thompson, Aug. 8, 2003, A.G. Op. 03-0385.

A city may enter into a lease purchase agreement in which it leases and eventually purchases all or part of a private utility system. However, the current board of aldermen of the city may not bind their successors in office by a lease purchase contract. Campbell, Sept. 26, 2003, A.G. Op. 03-0491.

A city may lease its uplands for use by the private, for-profit marine developer and so may allow use of the city's riparian and littoral rights. However, the developer would also have to obtain the right to occupy and use the tidelands by obtaining a lease from the State of Mississippi. Lynn, Oct. 16, 2003, A.G. Op. 03-0327.

A municipality has the authority to donate real property which has been declared surplus to bona fide not-for-profit civic or eleemosynary corporations organized and existing under the laws of the State of Mississippi which are recognized 501(c)(3) corporations for tax purposes. Hammack, Oct. 31, 2003, A.G. Op. 03-0374.

A city had the authority to lease property acquired by virtue of a grant under the Mississippi Rural Impact Act to a private business. The city must comply with any rules and regulations promulgated by the Mississippi Development Authority and with the terms of the grant. Carnathan, Nov. 21, 2003, A.G. Op. 03-0611.

Municipal employees may be authorized and encouraged to volunteer in a mentoring program envisioned between a City and public school system, benefitting school-age children who are residents of the municipality. DuPree, Jan. 5, 2004, A.G. Op. 03-0658.

The board of aldermen of a town may avoid the bidding process, and enter into a lease of property for use by a private company as a provided the board makes the findings, consistent with fact, required by this section. Null, Feb. 6, 2004, A.G. Op. 04-0018.

Whether the use of a portion of a parcel of surplus property or the part of a surplus building for charitable purposes is sufficient to satisfy the requirements of subsection (2) of this section is a decision for the municipal governing authorities, taking into consideration all of the relevant facts and circumstances. Thomas, May 14, 2004, A.G. Op. 04-0201.

The opinion of this office is that the sales of cemetery plots in a municipally owned cemetery are not subject to the requirements for sales of real property found in this section. Jordan, May 28, 2004, A.G. Op. 04-0204.

The authority granted by this section to expend municipal funds to match available grants is applicable to programs in which the municipality was participating, and not to the provision of municipal funds as a match for a purely private endeavor, such as the improvement and/or development of private property, albeit for a use which will be enjoyed by the public. There is no prohibition against the use of purely private funds to serve as a match for such a project, depending upon the terms of the grant being sought. Whites, July 23, 2004, A.G. Op. 04-0264.

This section contemplates that municipal property may be found to be surplus for less than a permanent period of time and may be leased out until once again needed for municipal purposes. If a majority of the members of the board of aldermen, after proper consideration of all factors, makes the finding that a piece of property is surplus, that determination should be by resolution duly recorded in the minutes. Wood, July 23, 2004, A.G. Op. 04-0346.

Assuming a deed of conveyance of property to a city does not contain suitable reverter language, no statutory authority can be found which would permit reconveying the real property back to the person who donated it to the city without following the procedures in this section. Sorrell, Aug. 20, 2004, A.G. Op. 04-0396.

A town should not enter into a lease of an unused city building with a group of local high school alumni for the purpose of storing and displaying awards and memorabilia without first resorting to either the bid or appraisal process. However, the town may donate municipally owned real property to a bona fide not-for-profit civic or eleemosynary corporation provided the proper factual determinations are made by the governing authorities. Further, pursuant to §§ 17-3-1 and 17-3-3 the town may appropriate and expend municipal funds to advertise the resources of the municipality. Null, Nov. 9, 2004, A.G. Op. 04-0482.

Subdivision (3)(c) of this section authorizes municipal governing authorities to lease property for less than fair market value to qualified non-profit civic or eleemosynary organizations. Whether an organization is a qualified entity is a factual determination which must be made by the municipal governing authorities and spread upon their minutes. Bogen, Nov. 15, 2004, A.G. Op. 04-0557.

A city has the authority to waive a building permit fee for the Humane Society to obtain a city building permit to construct an extensive animal shelter facility in the city. Hewes, Jan. 28, 2005, A.G. Op. 05-0018.

Disposition of property donated to a municipality by a cemetery committee. Eubanks, Apr. 15, 2005, A.G. Op. 05-0178.

A city has the authority to convey or lease to a non-profit corporation a building and the land on which it is located. Collins, Apr. 29, 2005, A.G. Op. 05-0209.

If a city's partnership with a county educational enhancement program would entail participation by the municipality in the programs of the organization and would not simply entail putting up the matching funds for a federal grant, Section 21-17-1 provides the authority to provide those matching funds. Montgomery, May 27, 2005, A.G. Op. 05-0236.

If a town decides not to operate a municipally owned water system, its governing authorities may contract with a private nonprofit water association to operate, maintain and make repairs to the system pursuant to Section 21-27-7; additionally, Section 21-17-1 (1972) would permit the town to sell or lease the improvements. Helmert, Oct. 28, 2005, A.G. Op. 05-0518.

Where a city advertised for bids on property and one of the bidders offered real property instead of a cash payment, the city could accept the property offered, if it makes a finding that the bid offering the property is the highest bid and that such bid is in compliance with the requirements stated in the advertisement by the city. Phillips, Dec. 27, 2005, A.G. Op. 05-0613.

Under the authority of Section 57-7-1, a town may lease surplus real property to a local industry without complying with the provisions of Section 21-17-1. Sennett, Feb. 10, 2006, A.G. Op. 06-0024.

A policy of a municipality establishing a lower fee for use of municipal facilities for charitable benefits than charged for other private uses would be impermissible. As an alternative, however, certain statutes authorize municipal donations to certain types of qualified organizations. Baum, Feb. 17, 2006, A.G. Op. 06-0048.

Governing authorities need not comply with the provisions of Section 21-17-1 for the disposal of surplus real property. Montgomery, Mar. 31, 2006, A.G. Op. 06-0075.

Nothing in the language of Section 21-17-1 prohibits a municipality from dividing a large parcel of surplus real property into smaller tracts so that the sale of each tract may be handled as separate transactions to achieve the highest price for the taxpayer. Shoemake, May 5, 2006, A.G. Op. 06-0164.

A municipality may re-convey real property to an original donor without cost only if the instrument by which the property was originally conveyed to the municipality contained a proper reverter clause. Lawrence, June 9, 2006, A.G. Op. 06-0236.

It is not legally required to follow the procedure set forth in Section 21-17-1 in order to lease space on a municipally owned water tank. Bishop, June 19, 2006, A.G. Op. 06-0221.

A town may, in its discretion, contract to pay a reasonable fee or commission to a licensed real estate broker in consideration for services rendered in connection with the lawful sale of the town's real property. Tach, June 30, 2006, A.G. Op. 06-0273.

Leasing or permitting space on municipal light poles for the location of transmitters for wireless internet service is not the granting of a franchise within the meaning of Sections 21-27-1 et seq. or Section 21-13-1(3). A municipality leasing that space would still be required to receive fair value for the lease to ensure it did not result in an unlawful donation, but upon a finding by the governing authorities that it would be in the best interests of the municipality, would not be required to advertise and solicit bids. Hedglin, June 30, 2006, A.G. Op. 06-0242.

A city must comply with Section 21-17-1 should it decide to dispose of the fee underlying a dedicated street. Herring, Sept. 11, 2006, A.G. Op. 06-0419.

For purposes of disposing of real property, a natural gas district must follow the provisions of Section 21-17-1. Bates, Nov. 3, 2006, A.G. Op. 06-0557.

When acquiring real property, a governing authority must comply with the provisions of Section 43-37-3 and may, within its discretion, establish a purchase price which exceeds the appraised value of the property when the determined purchase price is commensurate with the fair market value of the property. Shoemake, Nov. 17, 2006, A.G. Op. 06-0570.

Pursuant to Miss. Code Ann. § 21-17-1, a municipality no longer using surplus municipal property but desiring to retain title to it may, instead of donating it, lease the property to a bona fide not-for-profit corporation for less than fair market value without having to comply with competitive-bid requirements, so long as it makes the required factual determinations. Jones, February 16, 2007, A.G. Op. #07-00050, 2007 Miss. AG LEXIS 24.

Under Miss. Code Ann. § 61-5-39, the Tunica County Airport Commission, a joint venture of the Town of Tunica and Tunica County, may dispose of its unused real property by leasing or selling it to a nonprofit organization for use as a homeless shelter, with the consent of the governing authorities of both the town and the county, and using the procedures outlined in Miss. Code Ann. §§ 19-7-3, 21-17-1 or 57-7-1. Dulaney, March 16, 2007, A.G. Op. #07-00125, 2007 Miss. AG LEXIS 107.

RESEARCH REFERENCES

ALR. Municipal establishment or operation of off-street public parking facilities. 8 A.L.R.2d 373.

Granting or taking of lease of property by municipality as within authorization of purchase or acquisition thereof. 11 A.L.R.2d 168.

Power of city, town, or county or their officials to compromise of claim. 15 A.L.R.2d 1359.

Liability of municipal corporation for injury or death occurring from defects in, or negligence in construction, operation, or maintenance of its electric street-lighting equipment, apparatus, and the like. 19 A.L.R.2d 344.

Maintenance or regulation by public authorities of tourist or trailer camps, motor courts, or motels. 22 A.L.R.2d 774.

Municipal operation of sewage disposal plant as governmental or proprietary function. 57 A.L.R.2d 1336.

Municipality's liability arising from wrongful act in constructing and repairing sewers and drains. 61 A.L.R.2d 874.

Sufficiency of notice of claim against municipality as regards description of personal injury or property damage. 63 A.L.R.2d 863.

Sufficiency of notice of claim against municipality as regards time of accident. 63 A.L.R.2d 888.

Sufficiency of notice of claim against municipality as regards identity, name, and residence of claimant. 63 A.L.R.2d 911.

Power of municipal corporation to lease or sublet property owned or leased by it.

47 A.L.R.3d 19.

Validity of governmental borrowing or expenditure for purposes of acquiring, maintaining or improving stadium for use of professional athletic team. 67 A.L.R.3d 1186.

Plaintiff's right to bring tort action against municipality prior to expiration of statutory waiting period. 73 A.L.R.3d 1019.

Liability of municipal corporation for shooting of bystander by law enforcement officer attempting to enforce law. 76 A.L.R.3d 1176.

Maintenance of class action against governmental entity as affected by requirement of notice of claim. 76 A.L.R.3d 1244.

Liability of local government entity for injury resulting from use of outdoor playground equipment at municipally owned park or recreation area. 73 A.L.R.4th 496.

Laches as defense in suit by governmental entity to enjoin zoning violation. 73 A.L.R.4th 870.

Complaint as satisfying requirement of notice of claim upon states, municipalities, and other political subdivisions. 45 A.L.R.5th 109.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties and Other Political Subdivisions §§ 189 et seq., 407 et seq.

18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, etc., Form 96 (complaint, employment of auditor, restraining expenditure as illegal).

18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, etc., Form 113 (real estate, setting aside purchase).

18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, etc., Form 116 (public property, restraining private lease).

18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, etc., Form 117 (vehicle rental concession, injunction by high bidder).

18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, etc., Forms 131 et seq. (claim, notice and presentation).

18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, etc., Form 151 (complaint against municipality on claim or demand).

8 Am. Jur. Trials 57, Condemnation of Rural Property for Highway Purposes.

11 Am. Jur. Trials 189, Condemnation of Urban Property.

CJS. 62 C.J.S., Municipal Corporations §§ 139 et seq., 164 et seq.

§ 21-17-3. Exercise of powers.

The powers granted to municipalities by law shall be exercised by the governing authorities of such municipalities, in the manner provided by law.

SOURCES: Codes, 1892, § 2924; 1906, § 3315; Hemingway's 1917, § 5812; 1930, § 2392; 1942, § 3374-113; Laws, 1950, ch. 491, § 113, eff from and after July 1, 1950.

Cross References — Uniform system for issuance of negotiable notes or certificates of indebtedness, see §§ 17-21-51 et seq.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 222-227.

CJS. 62 C.J.S., Municipal Corporations § 175 et seq.

§ 21-17-5. Powers of governing authorities.

(1) The governing authorities of every municipality of this state shall have the care, management and control of the municipal affairs and its

property and finances. In addition to those powers granted by specific provisions of general law, the governing authorities of municipalities shall have the power to adopt any orders, resolutions or ordinances with respect to such municipal affairs, property and finances which are not inconsistent with the Mississippi Constitution of 1890, the Mississippi Code of 1972, or any other statute or law of the State of Mississippi, and shall likewise have the power to alter, modify and repeal such orders, resolutions or ordinances. Except as otherwise provided in subsection (2) of this section, the powers granted to governing authorities of municipalities in this section are complete without the existence of or reference to any specific authority granted in any other statute or law of the State of Mississippi. Unless otherwise provided by law, before entering upon the duties of their respective offices, the aldermen or councilmen of every municipality of this state shall give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in a penalty equal to five percent (5%) of the sum of all the municipal taxes shown by the assessment rolls and the levies to have been collectible in the municipality for the year immediately preceding the commencement of the term of office of said alderman or councilman; however, such bond shall not exceed One Hundred Thousand Dollars ($100,000.00). For all municipalities with a population more than two thousand (2,000) according to the latest federal decennial census, the amount of the bond shall not be less than Fifty Thousand Dollars ($50,000.00). Any taxpayer of the municipality may sue on such bond for the use of the municipality, and such taxpayer shall be liable for all costs in case his suit shall fail. No member of the city council or board of aldermen shall be surety for any other such member.

(2) Unless such actions are specifically authorized by another statute or law of the State of Mississippi, this section shall not authorize the governing authorities of municipalities to (a) levy taxes of any kind or increase the levy of any authorized tax, (b) issue bonds of any kind, (c) change the requirements, practices or procedures for municipal elections or establish any new elective office, (d) change the procedure for annexation of additional territory into the municipal boundaries, (e) change the structure or form of the municipal government, (f) permit the sale, manufacture, distribution, possession or transportation of alcoholic beverages, (g) grant any donation, or (h) without prior legislative approval, regulate, directly or indirectly, the amount of rent charged for leasing private residential property in which the municipality does not have a property interest.

(3) Nothing in this or any other section shall be construed so as to prevent any municipal governing authority from paying any municipal employee not to exceed double his ordinary rate of pay or awarding any municipal employee not to exceed double his ordinary rate of compensatory time for work performed in his capacity as a municipal employee on legal holidays. The governing authority of any municipality shall enact leave policies to ensure that a public safety employee is paid or granted compensatory time for the same number of holidays for which any other municipal employee is paid.

(4) The governing authority of any municipality, in its discretion, may expend funds to provide for training and education of newly elected or

appointed municipal officials before the beginning of the term of office or employment of such officials. Any expenses incurred for such purposes may be allowed only upon prior approval of the governing authority. Any payments or reimbursements made under the provisions of this subsection may be paid only after presentation to and approval by the governing authority of the municipality.

SOURCES: Codes, 1892, § 2925; 1906, § 3316; Hemingway's 1917, § 5813; 1930, § 2393; 1942, § 3374-114; Laws, 1950, ch. 491, § 114; Laws, 1985, ch. 487; Laws, 1989, ch. 526, § 1; Laws, 1990, ch. 418, § 1; Laws, 1992, ch. 430 § 1; Laws, 1998, ch. 315, § 1; Laws, 2000, ch. 363, § 2; Laws, 2000, ch. 515, § 2; Laws, 2006, ch. 419, § 1; Laws, 2007, ch. 546, § 2; Laws, 2009, ch. 467, § 11, eff from and after July 1, 2009.

Joint Legislative Committee Note — Section 2 of ch. 363, Laws of 2000, effective from and after July 1, 2000 (approved March 17, 2000), amended this section. Section 2 of ch. 515, Laws of 2000, effective from and after July 1, 2000 (approved March 30, 2000), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 515, Laws of 2000, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the sections are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Note — On June 12, 1998, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws, 1998, ch. 315, § 1.

Laws, 1989, ch. 526, § 3, effective from and after July 1, 1989, removed the provision for the repeal of this section effective October 1, 1989.

Cross References — Moving municipality's site of government in emergency resulting from enemy attack, see §§ 17-7-1 et seq.

Uniform system for issuance of negotiable notes or certificates of indebtedness, see § 17-21-51.

Jurisdiction and powers of boards of supervisors, see § 19-3-41.

Duties of mayors under various forms of government, see §§ 21-3-15 (code-charter); 21-5-7 (commission); 21-7-13 (council); 21-8-15 (mayor-council); 21-9-37 and (council-manager).

Duty of mayor generally, see §§ 21-15-7 et seq.

Authority to lease lands to the United States for the purpose of securing construction of air national guard armories, see § 33-11-15.

Establishing bridge and park commission and related matters, see §§ 55-7-1 et seq.

Airport authorities law, see §§ 61-3-1 et seq.

Provisions of municipal airport law, see §§ 61-5-1 et seq.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2. Power to adopt particular order, resolution or ordinance.
3. Judicial review.

4.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

City council was within its discretion to discharge a police chief because the chief allowed public property to be used for private employment in violation of Miss. Code Ann. § 21-17-5(2)(g) and the instructions of a city council and vice mayor, and the chief was provided with notice and a hearing in accordance with the city code. Patterson v. City of Greenville, 117 So. 3d 630 (Miss. Ct. App. 2013).

City was not authorized to make challenged expenditures for volunteer appreciation dinners, travel advances, police dinners, or City Beautiful Commission meeting absent entry approving expenditures in minutes of the Board of Alderman, regardless of whether expenditures were for lawful purpose; public board speaks and acts only through its minutes. Nichols v. Patterson, 678 So. 2d 673 (Miss. 1996).

Payment of extra checks to city employees at end of year was prohibited donation which city was not authorized to make. Nichols v. Patterson, 678 So. 2d 673 (Miss. 1996).

Home rule statute gives municipalities discretion in managing municipal affairs. Nichols v. Patterson, 678 So. 2d 673 (Miss. 1996).

Expenditures made by city are unlawful when made without express authorization in minutes of city's board, resulting in actual loss to public body. Nichols v. Patterson, 678 So. 2d 673 (Miss. 1996).

The duties of municipal officers cannot be extended by implication to acts not authorized by law. City of Hazlehurst v. Mayes, 96 Miss. 656, 51 So. 890 (1910).

A municipality has a right to pass all authorized ordinances that are reasonable, not inconsistent with the general and not destructive to lawful business. Johnson v. Town of Philadelphia, 94 Miss. 34, 47 So. 526, 19 Am. Ann. Cas. 103 (1908).

The powers of a municipality are to be exercised in conformity to and consistent with the general laws of the state. Crittenden v. Town of Booneville, 92 Miss. 277, 45 So. 723, 131 Am. St. R. 518 (1908).

The action of a de facto officer of a municipal corporation is valid. Greene v. Village of Rienzi, 87 Miss. 463, 40 So. 17, 112 Am. St. R. 449 (1906).

Municipal ordinances cannot be avoided by the imputation of bad faith in their passage. State ex rel. Vicksburg v. Washington Steam Fire Co. No. 3, 76 Miss. 449, 24 So. 877 (1899).

2. Power to adopt particular order, resolution or ordinance.

Madison, Mississippi, Rental Inspection and Property Licensing Act (RIPLA), providing for the licensing and inspection of rental properties, did not violate Miss. Code Ann. § 21-17-5(2)(h) because RIPLA did not directly or indirectly regulate rent, as (1) RIPLA did not set a minimum or maximum rental rate, establish a formula to aid in establishing rental rates, or require the landlord to submit rental rates, and (2) Mississippi statutory law supported RIPLA's surety requirements. Crook v. City of Madison, — So. 3d —, 2014 Miss. App. LEXIS 536 (Miss. Ct. App. Sept. 30, 2014).

Development impact fees constituted a tax that a city had no authority to assess; the state's home rule statute, Miss. Code Ann. § 21-17-5, did not authorize the city to impose a tax unless such tax was specifically authorized by another statute or state law. Mayor & Bd. of Aldermen v. Homebuilders Ass'n of Miss., Inc., 932 So. 2d 44 (Miss. 2006).

Ordinance prohibiting commercial establishments from allowing consumption of alcoholic beverages between midnight and 7:00 a.m., which defined "consumption" to include possession in open containers as well as ingestion, was not preempted by statute expressly permitting possession of alcoholic beverages in "wet" municipalities absent clear expression of legislative intent to permit consumption, as opposed to mere possession, without limitation in wet areas, given broad grant of authority to municipalities to regulate impact of alcoholic beverages upon public health, morals, and safety and public policy favoring prevention of alcohol-related altercations and motor vehicle accidents, as limiting possession of opened containers was reasonable and necessary to enforce limitations on consumption. Maynard v. City of Tupelo, 691 So. 2d 385 (Miss. 1997).

"Brown bag" ordinance prohibiting commercial establishments from allowing consumption of alcoholic beverages between midnight and 7:00 a.m. was valid exercise of police power, as object of ordinance was promotion of public safety and welfare and manner in which ordinance promoted those objectives was not oppressive, arbitrary, or discriminatory. Maynard v. City of Tupelo, 691 So. 2d 385 (Miss. 1997).

Municipality's powers are limited to those expressly delegated, and cannot be extended by mere implication; municipal enactment of comprehensive obscenity legislation is beyond municipality's power in absence of specific statutory authorization enabling municipality to enact obscenity ordinance; municipal obscenity ordinance which is inconsistent with state statute exceeds municipality's statutory authority even though changes were allegedly made by city to correct possible constitutional flaws. Videophile, Inc. v. City of Hattiesburg, 601 F. Supp. 552 (S.D. Miss. 1985).

A city cannot be estopped by an ultra vires contract. Edwards Hotel & City R. Co. v. City of Jackson, 96 Miss. 547, 51 So. 802 (1910).

Municipal authorities have the power to order the closing of a street where the public safety requires it, and a private citizen cannot interfere therewith, for the reason that he has recourse against the municipality for his damages. Poythress v. Mobile & O.R. Co., 92 Miss. 638, 46 So. 139 (1908).

Yazoo City has the authority to own and operate an electric railway and to issue bonds therefor under legislative authority. Love v. Holmes, 91 Miss. 535, 44 So. 835 (1907).

3. Judicial review.

Exemptions under a city ordinance before they can be allowed must be made in the clearest and most unambiguous terms. Edwards Hotel & City R. Co. v. City of Jackson, 96 Miss. 547, 51 So. 802 (1910).

The court itself should construe a municipal ordinance and not submit it to a jury for construction. Town of Pass Christian v. Washington, 81 Miss. 470, 34 So. 225 (1903).

Contemporaneous construction by municipal authorities may be considered in cases of doubtful ordinances, but not when they are clear. Town of Wesson v. Collins, 72 Miss. 844, 18 So. 360 (1895).

The Supreme Court will not take judicial notice of town ordinances. Naul v. State, 70 Miss. 699, 12 So. 903 (1893).

4.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

Where a statute authorizing municipalities to issue bonds for the purpose of locating a state normal college was constitutional, a municipality had power to issue bonds to induce the location of the State Normal College. Turner v. Hattiesburg, 98 Miss. 337, 53 So. 681 (1910); Turner v. County of Forrest, 53 So. 684 (Miss. 1910).

The establishment and maintenance by municipalities are for municipal purposes. Turner v. Hattiesburg, 98 Miss. 337, 53 So. 681 (1910); Turner v. County of Forrest, 53 So. 684 (Miss. 1910).

A mandamus cannot be issued against a municipality to compel the levy of a tax therein beyond the statutory limit. Town of Jonestown v. Ganong, 97 Miss. 67, 52 So. 579 (1910), error overruled 97 Miss. 67, 52 So. 692.

Under this section the mayor and board of aldermen of a city have full care, management and control of the property and finances thereof, but such powers must be exercised consistent with the laws of the state for the best interest of the inhabitants of the municipality. Montgomery v. State, 97 Miss. 292, 52 So. 357 (1910).

In such exercise of authority a city has power to pass an ordinance providing for the establishment of city depositories fixing rate of interest thereon and securities therefor. Montgomery v. State, 97 Miss. 292, 52 So. 357 (1910).

A treasurer depositing funds in a depository provided, and in the manner required for him, cannot be longer held responsible. Montgomery v. State, 97 Miss. 292, 52 So. 357 (1910).

Powers delegated to a city operating under this section are to be exercised by the mayor and board of aldermen in power at the time, but their actions cannot bind their successors in office. Edwards Hotel & City R. Co. v. City of Jackson, 96 Miss. 547, 51 So. 802 (1910).

A municipality coming under this chapter is not required to republish its ordinances. Chrisman v. City of Jackson, 84 Miss. 787, 37 So. 1015 (1905).

Where an ordinance creating an offense uses the common-law definition of a misdemeanor, an accessory before the fact to its violation may be punished as a principal. Reed v. State, 83 Miss. 192, 35 So. 178 (1903).

A municipal ordinance fixing in its first section a rate of taxation on all property except banks and solvent credits and by its second section fixing a lower rate on banks and solvent credits, cannot be held to impose the greater rate on banks. The exception in the first section and the second section cannot be treated as surplusage. Adams v. Capital State Bank, 74 Miss. 307, 20 So. 881 (1896).

A levy of a tax is indispensable to create a legal obligation to pay it. A taxpayer who has paid all taxes undertaken to be imposed upon his property is not in default for not having paid thereon. Adams v. Capital State Bank, 74 Miss. 307, 20 So. 881 (1896).

ATTORNEY GENERAL OPINIONS

Municipality may contract with private corporation to provide necessary equipment and monitoring services in order to operate Home Confinement Program. Haque, Jan. 31, 1990, A.G. Op. #90-0084.

Governing authorities of City of Biloxi have discretionary authority to continue agreement as contract for use of private organization's property for polling places, etc., for consideration called for in agreement, assuming that consideration is reasonable; continuation of agreement would not be considered donation prescribed by statute. Carter, Feb. 7, 1990, A.G. Op. #90-0069.

Where agency of federal government, which by guideline or regulation prohibits private entities from engaging in enterprise without involvement of local governmental entity, and further where no municipal funds will be expended for construction, operation and maintenance of park and marina facility and no income will be used for general municipal purposes, such involvement by City of Sardis is not inconsistent with existing state law. Shuler, March 15, 1990, A.G. Op. #90-0136.

There is no statute that requires bidders to post bid bonds when submitting bids to city for public construction works or public purchases; however, governing authorities of city may require bidders to post bid bonds on public construction works and/or public purchases. Johnson, April 18, 1990, A.G. Op. #90-0277.

Governing authorities in Okolona may not impose personal income tax on employees working in City. Gregory, May 14, 1990, A.G. Op. #90-0335.

City of Philadelphia may bid at public auction on parcel of real estate offered for sale by United States Postal Authority; municipal governing authorities may adopt order or resolution authorizing offer of up to specified dollar amount of municipal funds, consistent with value of property, for purpose of acquiring property at auction. Thomas, May 15, 1990, A.G. Op. #90-0321.

Statute prohibits city from adding fee to city water/osewer bill to be used exclusively for police protection and services, as such fee would in actuality be tax. Hancock, Oct. 4, 1990, A.G. Op. #90-0729.

Any use of municipal equipment or labor to maintain private cemetery would constitute illegal donation of public property for private benefit; there is no significant difference between maintaining private cemetery with public money and using county equipment to dig graves, using county equipment to dig graves has been declared illegal. Lawrence, Oct. 26, 1990, A.G. Op. #90-0230.

Salary bonuses constitute unauthorized donations, and are therefore prohibited. Clements, Oct. 26, 1990, A.G. Op. #90-0363.

Municipalities possess home rule authority to enter contracts of employment and provide corresponding employee compensation and work schedule policies that are tailored to meet the special circumstances of certain groups of employees, such as garbage collection workers. Primeaux, Feb. 12, 1992, A.G. Op. #91-0978.

Individual who is not employed by municipality and who lives free of charge on municipal property constitutes impermissible donation; however, governing authorities may hire retired policeman in part time capacity as custodian or maintenance supervisor of municipal park and allow him to live rent free on municipal property adjacent to park as part of his compensation. Woods, August 5, 1992, A.G. Op. #92-0576.

Use of municipal funds to buy property and build parking lot for the benefit of private industry would constitute impermissible donation, although municipality is authorized to buy property and engage in enterprise if municipality has certificate from the Dept. of Economic Development. Shepard, Sept. 16, 1992, A.G. Op. #92-0729.

City may adopt ordinance prohibiting parking on square and providing penalties therefore when businesses and offices are closed. Williams, Sept. 23, 1992, A.G. Op. #92-0629.

Statutes do not authorize municipality to give financial assistance to nursing students to enable these students to come back to municipality after graduation to work as nurses or nurse practitioners. James, Oct. 28, 1992, A.G. Op. #92-0818.

Municipality may not adopt policy in which employees may pool vacation and sick leave benefits or donate vacation and/or sick leave benefits to other employees. Criss, Oct. 28, 1992, A.G. Op. #92-0837.

Monetary rewards or granting time off with pay to municipal employees for suggestions that are implemented constitute unauthorized donations. Spell, Nov., 4, 1992, A.G. Op. #92-0820.

Municipalities may adopt policies in which employees may be compensated at end of year for unused sick leave; however, municipality must not include any such compensation for purposes of retirement benefits or credit, and may not report such compensation to PERS for credit as either compensation or credit for time. Spell, Nov., 4, 1992, A.G. Op. #92-0820.

Municipality may by ordinance prohibit political signs on city property and rights-of-way. Ellis, Nov. 25, 1992, A.G. Op. #92-0893.

Payment of extra compensation to municipal employees in recognition of excellent service constitutes impermissible "donation" pursuant to Miss. Code § 21-17-5(2)(g). Hicks, Jan. 20, 1993, A.G. Op. #92-1006.

Payment of travel expenses for individual who is not city employee or representative of city to attend meetings of nonprofit organization or corporation would constitute impermissible donation pursuant to Miss. Code Section 21-17-5(2)(g). Wansley, Feb. 25, 1993, A.G. Op. #93-0104.

Pursuant to Miss. Code Section 21-17-5(2)(a), municipalities may not levy taxes unless specifically authorized by another statute. Self, Mar. 3, 1993, A.G. Op. #93-0066.

Under Miss. Code Section 21-17-5, municipality could not pass ordinance upon matter which state has preempted, either through express language or through regulation of particular topic; most traffic regulations have been so preempted by state laws. Baker, Mar. 31, 1993, A.G. Op. #93-0036.

Legislative grant of home rule to municipalities, codified at Miss. Code Section 21-17-5, expressly empowers cities to adopt any orders, resolutions or ordinances with respect to municipal affairs which are not inconsistent with or preempted by state law. Mitchell, Apr. 23, 1993, A.G. Op. #93-0007.

Miss. Code Section 21-17-5 provides sufficient authority for municipality to adopt and implement ordinances regulating cable television service rates, but only to extent and in manner authorized under federal law which requires, among other things, prior FCC approval and certification of any local assertion of regulatory authority. Mitchell, Apr. 23, 1993, A.G. Op. #93-0007.

Although Miss. Code Section 21-17-5, commonly known as "home rule" statute, grants broad authority to municipalities, such authority may not be exercised in manner not consistent with Mississippi Constitution or existing statutes or laws. Gex, May 19, 1993, A.G. Op. #93-0332.

Miss. Code Section 21-17-5 provides sufficient flexibility and authority to conduct elections to determine will of electorate regarding issues falling within city's jurisdiction and on which legislature is silent, provided governing authorities determine that appropriation of public monies for such purposes is in city's best interest. Graves, May 26, 1993, A.G. Op. #93-0290.

Non-binding referenda concerning matters under jurisdiction of municipal governing authorities maybe placed on general election ballot pursuant to Miss. Code Section 21-17-5. Graves, May 26, 1993, A.G. Op. #93-0290.

Miss. Code Section 21-17-5 gives municipalities responsibility for the care, management and control of municipal property; therefore, municipality may, by ordinance, impose weight limit on trucks being driven on municipal streets. Clark, June 9, 1993, A.G. Op. #93-0348.

Miss. Code Section 21-17-5(2) provides that municipality must have specific authority to grant donation. McFatter, June 9, 1993, A.G. Op. #93-0405.

Donation either directly to public school system or indirectly to public school system through nonprofit organization for purpose of funding study of public school system is not donation to social and community service program, as contemplated by Miss. Code Section 21-17-5; there is no other statutory authority for municipality to make a donation to nonprofit organization for purpose of studying programs of public schools. McFatter, June 9, 1993, A.G. Op. #93-0405.

Municipal governing authority could authorize employment of legal counsel for purpose of intervening in election contest in order to protect city's interest. Ellis, July 14, 1993, A.G. Op. #93-0499.

In accordance with general grant of powers to municipality by Section 21-17-1, and authority to manage and control municipal property in its charge, City may contract with vendors for installation of ATM in city jail or any other city building. Mitchell, Jan. 12, 1994, A.G. Op. #93-0874.

City may establish new policy of paying employees for working on holiday instead of awarding compensatory time and city may pay employees for compensatory time accumulated prior to effective date of policy or accumulated prior to effective date of Section 21-17-5(3) as amended. Kerby, March 2, 1994, A.G. Op. #94-0047.

Although Miss. Code Sections 25-3-91 and 25-3-95, which permit state employees to donate a certain portion of their earned personal leave or major medical leave to another employee under some circumstances, do not apply to municipal employees, municipalities may adopt ordinances or resolutions providing for a similar program in a municipality in the absence of a state statute governing a similar municipal employee leave program. Stark, July 18, 1997, A.G. Op. #97-0361.

Municipal wastewater treatment systems may be operated by long-term contracts with private firms, provided the term of contract does not extend beyond the terms in office of the current governing authorities. Reno, March 6, 1998, A.G. Op. #98-0069.

Municipal governing authorities may authorize a police chief to take a police vehicle home outside the city limits at nights and on weekends only if they determine that such use would benefit and be in the best interest of the municipality; the police chief would not be authorized to use the vehicle for his own benefit, as in running personal errands or as transportation to part-time employment. Walker, March 6, 1998, A.G. Op. #98-0102.

A municipality does not have the authority to expend funds for a market research study to ascertain the feasibility of a nonprofit corporation such as the YMCA. Stockton, March 6, 1998, A.G. Op. #98-0110.

Term limits for city council members cannot be imposed by municipalities as Subsection 2(e) prohibits legislative acts that change the form or structure of government. Allen, March 27, 1998, A.G. Op. #98-0150.

A municipality is limited to paying an employee not to exceed double his ordinary rate of pay for working on a legal holiday. Aston, April 10, 1998, A.G. Op. #98-0091.

The language of the statute is prospective only and, therefore, applies only to aldermen and councilmen who take office after July 1, 1998, the effective date of the statute, and does not apply to officers who are already in office. Wise, April 10, 1998, A.G. Op. #98-0178.

Notwithstanding that a baseball park owned by a baseball association is located in a town, the town can not provide for the hauling of the dirt and/or the maintenance of the baseball park. Lanford, April 24, 1998, A.G. Op. #98-0189.

A county board of supervisors can not legally provide dirt for the use of a baseball association and/or provide for maintenance of any kind to the baseball field owned by the association. Lanford, April 24, 1998, A.G. Op. #98-0189.

The governing authorities may accept a donation for unspecified purposes for the police and/or fire department, and may place the funds in the municipal treasury and then appropriate the funds to the police or fire department in accordance with the intent of the donor(s) as long as the funds are used for statutorily authorized purposes; however, the governing authorities may not accept a donation and place the funds in a special account designated as a benevolent fund to be used for purposes beyond those authorized by statute for police and fire departments. Bruni, May 15, 1998, A.G. Op. #98-0264.

Police and fire departments do not have authority to enter into a contract or accept donations, but the governing authorities may accept donations for the police or fire department and may place the funds in an appropriate fund, whether general or special, and use them for the designated purpose as long as the purpose is authorized by statute. Bruni, May 15, 1998, A.G. Op. #98-0264.

Municipal governing authorities do not have authority to create an independent board, authority, or commission which can take official action pursuant to the home rule statute because the statute does not allow governing authorities to change the form or structure of municipal government and because the area of the law has been preempted by state statutes. McDonald, May 22, 1998, A.G. Op. #98-0275.

Local governmental units may individually contract with a private entity to provide the services enumerated pursuant to the Home Rule statute. Thompson, June 5, 1998, A.G. Op. #98-0270.

A municipal vehicle may not be used for the personal use of an employee since such use would constitute an impermissible donation; accordingly, if an employee is to be permitted to take a vehicle to his home for nights and/or weekends, the governing authorities of the municipality may authorize such use only if, in their determination, the duties of the employee necessitate such use and such use of the vehicle would benefit and be in the best interest of the municipality. Ferguson, August 7, 1998, A.G. Op. #98-0374.

Police officers may not ride their family around in the police car when off duty. Doty, August 28, 1998, A.G. Op. #98-0392.

Police officers may not use a police car for personal business when off duty, such as going to a grocery store, church, shopping, and things of that nature. Doty, August 28, 1998, A.G. Op. #98-0392.

Municipal governing authorities may permit police officers to use police cars to travel to their residences outside the city limits if they determine that such use of the vehicle would benefit and be in the best interest of the municipality. Doty, August 28, 1998, A.G. Op. #98-0392.

Municipal governing authorities may permit a police officer who is not the chief to use a police car to travel outside the county to his residence if they determine consistent with fact that his duties necessitate such use and that such use of the vehicle would benefit and be in the best interest of the municipality. Doty, August 28, 1998, A.G. Op. #98-0392.

Providing banking services to the public is not a proper municipal purpose, and there is no authority for the purchase or lease-purchase of an automatic teller machine to be owned and serviced by a municipality. Horne, August 28, 1998, A.G. Op. #98-0511.

A municipality may not lease a building and surrounding land in an industrial park for nominal consideration. Jones, September 4, 1998, A.G. Op. #98-0481.

While an individual may make a donation to a volunteer fire department, there is no authority for the governing authorities of a municipality to include a specific fee as a line item on water/sewer bills sent to municipal residents for the support of the volunteer fire department, even if payment of the fee is voluntary. Threatt, November 25, 1998, A.G. Op. #97-0068.

A city had the authority to enter into a management contract for the operation and maintenance of a city-owned multi-educational complex since the operation of the complex was in furtherance of a proper municipal purpose. Thomas, November 25, 1998, A.G. Op. #98-0723.

The provisions of §§ 9-5-131, 9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, only mandate the use of tax assessment rolls and the avails to be collected from levies thereon in calculating the amount of the bonds therein required. Bryant, January 29, 1999, A.G. Op. #99-0011.

The calculation of a bond pursuant to §§ 9-5-131, 9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, includes all assessment rolls upon which a board of supervisors may levy ad valorem taxes. Bryant, January 29, 1999, A.G. Op. #99-0011.

The calculation pursuant to §§ 9-5-131, 9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, includes all ad valorem tax levies listed on the certified levy sheet, including school district levies. Bryant, January 29, 1999, A.G. Op. #99-0011.

The calculation pursuant to §§ 9-5-131, 9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, includes all classes of property upon which ad valorem taxes are levied and collected. Bryant, January 29, 1999, A.G. Op. #99-0011.

In calculating the amount of a bond pursuant to §§ 9-5-131, 9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, the total amount of ad valorem taxes to be collected, rather than the actual amount collected, must be used. Bryant, January 29, 1999, A.G. Op. #99-0011.

There is no authority for a municipality to donate funds to the Southern Poison Control Center. Snyder, April 23, 1999, A.G. Op. #99-0193.

No violation of this section is presented where a municipality provides funds to an economic development authority pursuant to local and private act specifically authorizing such contributions. Dorrill, May 14, 1999, A.G. Op. #99-0208.

A municipality may own and operate a historical museum and may lease the museum property to a nonprofit historical society to maintain and operate the museum on behalf of the city with a lease and management agreement. Carter, July 23, 1999, A.G. Op. #99-0284.

In the absence of any provision under state law for a municipal leave donation program, a municipality under the authority of home rule may adopt or enact a program similar to the one applicable to state employees under § 25-3-95(8). Mitchell, August 6, 1999, A.G. Op. #99-0372.

Pursuant to home rule, a municipality may advertise the fact that a particular business or other organization has donated a vehicle to the municipal police department by placing the name of the donating entity upon the vehicle; however, the donor's name must not be distracting and must be small enough so that the general public can readily and easily identify the vehicle as an official municipal police vehicle. Kinsey, August 6, 1999, A.G. Op. #99-0401.

City governing authorities did not have authority to donate funds to a foundation for scholarships for county residents at Jackson State University and Alcorn State University, make donations to churches, or give financial assistance to elderly county residents and did not have authority to donate funds to a foundation to administer a random drawing to give away ten air conditioning window units donated by the manufacturer to ten people. Rohman, May 19, 2000, A.G. Op. #2000-0245.

Counties and municipalities may sell advertising on their public web sites and may regulate the content, subject, and identity of its advertisers to promote the public safety, health, or welfare. McLeod, June 12, 2000, A.G. Op. #2000-0278.

Governing authorities do not have authority to create an independent board, authority, or commission which can take official action pursuant to the home rule statute, because this statute does not allow governing authorities to change the form or structure of municipal government and because the area of the law has been preempted by state statutes. Lynn, Mar. 29, 2002, A.G. Op. #02-0139.

There is no authority for a mayor or the governing authorities of a code charter municipality to appoint aldermen as commissioners over municipal departments. McKenzie, Aug. 30, 2002, A.G. Op. #02-0507.

An ordinance which prohibits potential contractors from the bidding process would be inconsistent with Section 31-7-13, which sets forth specific requirements for advertising and soliciting bids. McKissack, Dec. 13, 2002, A.G. Op. #02-0119.

Municipalities may donate to a Main Street Project and to local economic development organizations office space and in-kind services, however, there is no authority for a municipality to donate the time of a full-time or part-time employee who receives compensation and benefits from the municipality, but works for a Main Street Project or economic development organization, or to contract to provide a full-time or part-time municipal employee to a Main Street Project or local economic development organization for consideration. Farmer, Dec. 20, 2002, A.G. Op. #02-0603.

A municipality may lease space in a municipal building to a nonprofit corporation pursuant to Section 21-17-1. Farmer, Dec. 20, 2002, A.G. Op. #02-0603.

Local governing authorities may not pay for holidays when no work is performed, but are limited to allowing additional leave. Mitchell, Jan. 30, 2003, A.G. Op. #03-0008.

A municipal judge may file a criminal affidavit with the municipal court and must then recuse himself from the case; another municipal judge may hear the case, or the municipal judge may transfer the case to the justice court. Thomas, Jan. 17, 2003, A.G. Op. #03-0007.

Pursuant to Section 21-17-5, a Board of Aldermen has the authority to hold a nonbinding referendum on whether the Mayor's job should be full time or part time. Beckett, Jan. 31, 2003, A.G. Op. #03-0038.

A municipality, pursuant to its authority to establish salaries and benefits, may enlarge upon the amount of family and medical leave available to municipal employees. Bowman, Feb. 7, 2003, A.G. Op. #03-0771.

A city may not allow holiday pay for public safety employees who do not work on the holiday and, accordingly, may not allow holiday pay to accumulate through the year to be paid in a lump sum annually. Hewes, Feb. 14, 2003, A.G. Op. #03-0002.

Governing authorities have the authority to make the determination not to use radar speed detection devices to enforce municipal speed limits and to remove radar devices that have already been installed in municipal vehicles. Stuart, May 30, 2003, A.G. Op. 03-0245.

Section 21-17-5(2)(c) does not prohibit a municipality operating under a special charter having its own provisions for conducting municipal elections from following appropriate statutory authority (Section 21-17-11) in seeking to amend its charter with regard to those election provisions. McFatter, May 30, 2003, A.G. Op. 03-0247.

A municipal governing body may name a municipal building after a person that body wishes to recognize and honor. Brown, Oct. 23, 2003, A.G. Op. 03-0587.

Employees who work on a Saturday or Sunday may not receive compensatory time or compensatory pay regardless of the fact that the day is an "actual holiday." These employees should receive ordinary pay for work performed on an "actual holiday." Compensatory time or compensatory pay may be given for work performed on a "legal holiday," as long as there exists a policy providing for such at the time the work was performed. Hammack, Jan. 23, 2004, A.G. Op. 02-0605.

It is within the authority of the governing authorities of a city to enact a policy which authorizes the payment of up to double a police officer's regular rate of pay for the hours worked on a legal holiday. Likewise, a policy could be established authorizing the accrual of compensatory time at double the regular accrual rate for compensatory time for hours worked on a legal holiday. James, Mar. 12, 2004, A.G. Op. 04-0098.

Municipal governing authorities are not mandated by subsection (3) of this section to provide additional pay or leave for employees working on legal holidays. However, if they do, the manner of payment or accrual of leave is to be calculated on an hour for hour basis. James, Mar. 12, 2004, A.G. Op. 04-0098.

A legal holiday begins at 12:00 a.m. and ends at 11:59 p.m. James, Mar. 12, 2004, A.G. Op. 04-0098.

If municipal employees having a work schedule of 8:00 a.m. to 5:00 p.m. work a full regular work schedule on a legal holiday, then for pay purposes they are entitled to "holiday pay" or extra leave for working that eight hour period, if the municipal governing authorities have enacted policies providing for such extra pay or extra leave. If employees only work a portion of their regular work schedule on a holiday, they are only entitled to "holiday pay" or extra leave commensurate with the actual time. James, Mar. 12, 2004, A.G. Op. 04-0098.

If municipal employees having a work schedule from 7:00 a.m. to 7:00 p.m. work that regular work schedule on a legal holiday, then for pay purposes they are entitled to "holiday pay" or extra leave for working that twelve hour period, if the municipal governing authorities have enacted policies providing for such extra pay or extra leave. For employees having a work schedule of 7:00 p.m. to 7:00 a.m., the amount of "holiday pay" or extra leave earned would depend upon that portion of the legal holiday worked. James, Mar. 12, 2004, A.G. Op. 04-0098.

If a vehicle has been offered (donated) to the municipality, and there has been no acceptance of that vehicle, the vehicle should not be included in the city's inventory, and no duties exist with regard to that vehicle. McLaurin, July 16 2004, A.G. Op. 04-0356.

Authority for the donation of city funds to a voluntary relief organization for the benefit of those who suffered from Hurricane Katrina may be found in a number of provisions of the Mississippi Code. Trotter, Sept. 23, 2005, A.G. Op. 05-0484.

The authority of a city council to enact orders, ordinances and resolutions, as established by Section 21-17-5, applies to matters which are properly within the jurisdiction of the legislative branch. As such, a council may not lawfully enact policies with regard to the daily operations of municipal departments, a power which is firmly rooted in the executive branch of government. Smith, Oct. 21, 2005, A.G. Op. 05-0519.

A town may not donate water system improvements to a private community water association. Helmert, Oct. 28, 2005, A.G. Op. 05-0518.

Municipalities are prohibited from making donations absent specific statutory authority to do so. Thomas, Jan. 27, 2006, A.G. Op. 06-0014.

The award of compensatory time or "holiday pay" to employees not actually working on a holiday would constitute an unlawful donation. Kohnke, Apr. 7, 2006, A.G. Op. 06-0123.

As long as the provisions of a municipal ordinance requiring the registration of sex offenders supplement, and do not conflict, with the provisions of Section 45-33-21, a municipality is within the authority granted it by Section 21-17-5 to enact such an ordinance. Gibson, Apr. 21, 2006, A.G. Op. 05-0382.

A municipality may conduct a non-binding referendum on the adoption of zoning. Beckett, Sept. 29, 2006, A.G. Op. 06-0481.

A municipality may adopt an ordinance, consistent with its authority under Section 21-17-5, that permits payroll deduction of union membership dues. Evans, Dec. 13, 2006, A.G. Op. 06-0543.

Although Sections 63-3-201 and 63-9-11 provide that a violation of the rules of the road is a criminal violation, a city is not prohibited from enacting additional ordinances also making disobedience or disregard of a traffic control signal a civil offense. Mitchell, Dec. 13, 2006, A.G. Op. 06-0170.

A County Board of Supervisors can hold a non-binding referendum to ascertain the opinion of citizens of the county concerning a casino proposed by an Indian tribe on lands owned by the tribe in the county, and does not have to wait until the next regular election year. The issue is within the jurisdiction of the Board and justifies the use of the county's home rule powers to call for the referendum, but the Board must first make a finding that the use of public funds for such a referendum is in the county's best interest. Guice, March 7, 2007, A.G. Op. #07-00108, 2007 Miss. AG LEXIS 104.

For the Tunica County Utility District, which is county-owned, to fund the construction of connecting water lines to a privately owned utility company would constitute an unlawful donation under Miss. Code Ann. § 19-3-40 and Miss. Const. of 1890, Art. 4 § 66, unless the private utility gives adequate consideration, which may take into account the value of and cost to replicate the backup service that would be provided to the private utility. Dulaney, March 15, 2007, A.G. Op. #07-00123, 2007 Miss. AG LEXIS 62.

A County Board of Supervisors can hold a non-binding referendum to ascertain the opinion of citizens of the county concerning proposed gaming operations by an Indian tribe on lands owned by the tribe in the county. The issue is within the jurisdiction of the Board and justifies the use of the county's home rule powers to call for the referendum, but the Board must first make a finding that the use of public funds for such a referendum is in the county's best interest. Yancey, March 26, 2007, A.G. Op. #07-00178, 2007 Miss. AG LEXIS 123.

RESEARCH REFERENCES

ALR. Validity of municipal regulation of storage or accumulation of lumber, straw, trash, or similar inflammable material. 64 A.L.R.2d 1040.

Am Jur. 23 Am. Jur. Pl & Pr Forms (Rev), Taxpayers' Actions, Form 1 (complaint, petition, or declaration to enjoin illegal expenditure of public funds).

§ 21-17-7. Appropriation of funds.

The governing authorities of municipalities shall have the power to appropriate the funds thereof for the current expenses of the municipality in the manner provided by law.

SOURCES: Codes, 1892, § 2942; 1906, § 333; Hemingway's 1917, § 5830; 1930, § 2409; 1942, § 3374-125; Laws, 1950, ch. 491, § 125, eff from and after July 1, 1950.

Cross References — Authority of counties and municipalities to expend monies to advertise resources, see § 17-3-1.

County and municipal appropriations to planning and development districts, see § 17-19-1.

Uniform system for issuance of negotiable notes or certificates of indebtedness, see §§ 17-21-51 et seq.

How monies are appropriated for municipality's operations, see § 21-13-3.

Provisions of municipal budget law, see §§ 21-35-1 et seq.

Penalty for unauthorized appropriations, see § 21-39-15.

Penalty for wrongfully issuing, signing or attesting to warrant, see § 21-39-17.

Authority of a municipality to expend general fund monies to match funds available to support the arts, see § 39-15-1.

Municipal donations for planning development of the Pearl River, see § 51-9-11.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

A city may not create a municipal debt for money furnished to a separate school district which includes the municipality. Stevens v. City of Brookhaven, 64 F.2d 659 (5th Cir. 1933).

This section applies to voluntary municipal actions, but a court of competent jurisdiction has power to make effective its judgment against municipality. Town of Jonestown v. Ganong, 97 Miss. 67, 52 So. 579 (1910), error overruled 97 Miss. 67, 52 So. 692.

Under Const. 1890 § 183, a municipality cannot appropriate money in aid of a corporation, whether it belongs to it in its public or private capacity. Adams v. Jackson Elec. Ry., L. & P. Co., 78 Miss. 887, 30 So. 58 (1901).

If a municipality wrongfully appropriates money in aid of a corporation, the state revenue agent may sue for and recover it for the use of the municipality. Adams v. Jackson Elec. Ry., L. & P. Co., 78 Miss. 887, 30 So. 58 (1901).

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 553-561.

23 Am. Jur. Pl & Pr Forms (Rev), Taxpayers' Actions, Form 31 (complaint, petition, or declaration to enjoin payment of drafts of municipal corporation exceeding authorized debt limit).

CJS. 63 C.J.S., Municipal Corporations §§ 2071-2076, 2096-2105.

§ 21-17-9. Amendment of municipal charter at behest of governing authority.

When a municipality now existing, which has not adopted the code charter or commission form of government, but is governed by another charter, shall desire to amend its charter, the same may be done in this way: the mayor and board of aldermen, city council, or municipal authority, by whatever name known, may prepare, in writing, the desired amendment or amendments and have the same published for three (3) weeks in a legal newspaper published in the municipality, if there be one, and, if none, then by posting for said time in at least three (3) public places therein, after which the proposed amendment or amendments shall be submitted to the Governor, who shall submit the same to the Attorney General for his opinion. The publication of the amendment or amendments may be made as provided in Section 21-17-19. If the Attorney General is of the opinion that the proposed amendment or amendments are consistent with the Constitution and laws of the United States and the Constitution of this state, the Governor shall approve the proposed amendment or amendments. If, after publication is made, one-tenth ($\frac{1}{10}$) of the qualified electors of the municipality shall protest against the proposed amendments, or any of them, the Governor shall not approve the ones protested against until they shall be submitted to and ratified by a majority of the electors of the municipality voting in a special election. Amendments, when approved by the Governor, shall be recorded, at the expense of the municipality, in the office of the Secretary of State and upon the records of the mayor and board of aldermen, or other governing authorities of the municipality, and when so recorded shall have the force and effect of law. No amendment to the private or special charter of any municipality shall be adopted or approved when such amendment is in conflict with any of the provisions of this title expressly made applicable to municipalities operating under a private or special charter, or is in conflict with the provisions of any other legislation expressly made applicable to any such municipality.

SOURCES: Codes, 1892, § 3039; 1906, § 3444; Hemingway's 1917, § 6004; 1930, § 2625; 1942, § 3374-109; Laws, 1948, ch. 383, § 3; Laws, 1950, ch. 491, § 109; Laws, 1988, ch. 457, § 3, eff from and after December 8, 1988 (the date the United States Attorney General interposed no objection to the amendment).

Cross References — Powers of governor generally, see § 7-1-5.
Requesting attorney general's opinion, see § 7-5-25.
Amendment of charter at behest of electorate, see § 21-17-11.
Limited application of this section to various municipalities, see § 21-17-13.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

The Election Commission had an official duty to see to it that the elections in a city were carried out in compliance with state law and, as such, the circuit court had the power and jurisdiction to enjoin the elections until the city could amend its charter in compliance with the statute. City of Grenada v. Harrelson, 725 So. 2d 770 (Miss. 1998).

The legislature has granted each municipality power to amend its special charter, but when municipality undertakes to make this amendment whether as to substance or form, it must follow the statute as to manner and method by which such amendment may be made. Bishop v. City of Meridian, 223 Miss. 703, 79 So. 2d 815 (1955).

The legislature, by granting municipalities the power to amend a private or special charter, did not give a municipality authority to declare that all functions exercised by the city are public governmental functions. Bishop v. City of Meridian, 223 Miss. 703, 79 So. 2d 815 (1955).

The mere power to amend a private or special charter does not have the effect of vesting in the city authorities the power to abolish all actions for damages based upon the negligent failure of the city authorities to maintain the street in a proper and safe condition. Bishop v. City of Meridian, 223 Miss. 703, 79 So. 2d 815 (1955).

The recording of amendments to municipal charters is necessary to give the amendments any effect. Williams v. City of Vicksburg, 116 Miss. 79, 76 So. 838 (1917).

2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

Where a city has first adopted an amendment to its charter it need not be readopted after its publication and approval by the governor and attorney-general. Sick v. City of Bay St. Louis, 113 Miss. 175, 74 So. 272 (1917).

The legislature is prohibited by § 88 Const. 1890 to pass a special act amending the charter of a city. Monette v. State, 91 Miss. 662, 44 So. 989, 124 Am. St. R. 715 (1907), overruled on other grounds, Glover v. Columbus, 197 Miss. 467, 19 So. 2d 756 (1944).

An amendment to the charter of a city which created the office of police justice did not create a new court, but merely provided a different presiding officer for the court already in existence. Ex parte Dickson, 89 Miss. 778, 42 So. 233 (1906).

This section as amended, Laws 1905 p. 79, authorizing the amendment of the charters of the municipalities which have not adopted the Code Chapter on "municipalities," and allowing amendments inconsistent with said Code Chapter, is not violative of Const. 1890, § 88. Yazoo City v. Lightcap, 82 Miss. 148, 33 So. 949 (1903).

ATTORNEY GENERAL OPINIONS

Since city is governed by its own private charter which prescribes length of terms that its elected officials serve, and since Miss. Code Section 21-17-9 prescribes procedure whereby municipal charters may be amended, section of charter that prescribes length of terms of elected municipal official could be amended to include provision to limit terms of said officials, provided said amendment is adopted in accordance with Miss. Code Section 21-17-9. Hicks, Jan. 5, 1993, A.G. Op. #92-0980.

The governing authorities of a City may change the form of government to a mayor council form of government by amending the special charter in accordance with Section 21-17-9 and create a mayor council municipality similar to the mayor council form of government set forth in Section 21-8-1 et seq. Hutcherson, October 11, 1996, A.G. Op. #96-0651.

If an amendment is submitted, after proper notification, and no protests are filed at the time of submission to the Governor's Office, but less that 1/10th of the protests are filed at the time of the Governor's signing of the amendment, the protestors do not have more time to secure signatures. Criss, May 15, 1998, A.G. Op. #98-0210.

As between qualified newspapers, a newspaper with a known office of publication within the municipality must be selected to publish the legal notices of that municipality. Edens, July 23, 1999, A.G. Op. #99-0289.

The City of McComb could not pass an ordinance to institute changes to the required qualifications of candidates to municipal elective office; instead, the city was required to amend its Special Charter. White, July 3, 2002, A.G. Op. #02-0134.

In addition to approval by the Attorney General, a proposed amendment to the Special Charter of the City of Greenville also requires approval of the U.S. Department of Justice because it changes voting districts within the municipality. Prospere, Feb. 5, 2003, A.G. Op. #03-0050.

Proposed amendments to the special charter of a city to alter the corporate limits to reflect boundaries approved in a prior annexation, and change the organization of municipal government to provide for an additional alderman to be elected at large should be approved. The municipality must submit any changes which may affect voting to the U.S. Department of Justice pursuant to Section 5 of the Voting Rights Act of 1965 for preclearance prior to enforcing any such changes. Musgrove, Sept. 5, 2003, A.G. Op. 03-0466.

RESEARCH REFERENCES

ALR. Doctrine of de facto existence or powers of municipal corporation as applicable to amendment or revision of charter. 7 A.L.R.2d 1407.

Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 53-55.

18A Am. Jur. Pl & Pr Forms (Rev), Notice, Form 1 (notice, general form).

18A Am. Jur. Pl & Pr Forms (Rev), Notice, Forms 24, 25 (affidavit of notice by posting or publication).

§ 21-17-11. Amendment of municipal charter at behest of electorate.

It shall be lawful for any number, not less than twenty percent (20%) of the qualified electors of any municipality, by petition, to propose an amendment or amendments to the charter of such municipality not in conflict with the Constitution and laws of the United States, or the Constitution of this state. The said amendment or amendments shall be published for three (3) weeks prior to a special election in a newspaper published in the municipality, if there be one, and if not, by posting for said time in at least three (3) public places therein. The publication of the amendment or amendments may be made as provided in Section 21-17-19. If such election results in favor of any such amendment or amendments, then the amendment or amendments shall be submitted to the Governor, as is provided in Section 21-17-9, and the procedure therein outlined shall be followed, except that it shall not be necessary to republish such amendment or amendments, or resubmit such amendment or amendments for approval of the qualified electors.

SOURCES: Codes, 1942, § 3374-110; Laws, 1948, ch. 383, § 4; Laws, 1950, ch. 491, § 110; Laws, 1988, ch. 457, § 4, eff from and after December 8, 1988 (the date the United States Attorney General interposed no objection to the amendment).

Cross References — Amendment of municipal charter at behest of governmental authority, see § 21-17-9.

Limited application of this section to various municipalities, see § 21-17-13.

ATTORNEY GENERAL OPINIONS

General policy or ordinance allowing city firemen to unlock any vehicle upon demand and upon payment of $10.00 fee would constitute private business venture and is not proper governmental purpose; city firemen or other personnel may provide such assistance without charge as accommodation and service to general public. Doty, Jan. 12, 1994, A.G. Op. #93-0953.

As between qualified newspapers, a newspaper with a known office of publication within the municipality must be selected to publish the legal notices of that municipality. Edens, July 23, 1999, A.G. Op. #99-0289.

Section 21-17-5(2)(c) does not prohibit a municipality operating under a special charter having its own provisions for conducting municipal elections from following appropriate statutory authority (Section 21-17-11) in seeking to amend its charter with regard to those election provisions. McFatter, May 30, 2003, A.G. Op. 03-0247.

A town is required by law to use separate ballots, separate ballot boxes and/or separate ballot receipt books for a special election regarding a proposed amendment to the municipal charter. McFatter, Oct. 24, 2003, A.G. Op. 03-0525.

If a proposed amendment to the municipal charter is passed by the voters on November 11, 2003, and if the amendment is approved by the Governor prior to December 2, 2003, the amendment would apply to the town's general election held on December 2, 2003. McFatter, Oct. 24, 2003, A.G. Op. 03-0525.

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 53-55.

18A Am. Jur. Pl & Pr Forms (Rev), Notice, Form (notice, general form).

18A Am. Jur. Pl & Pr Forms (Rev), Notice, Forms 24, 25 (affidavit of notice by posting or publication).

§ 21-17-13. Applicability of particular sections.

The provisions of Sections 21-17-9 and 21-17-11, shall be applicable to all municipalities of this state, whether operating under a code charter, special charter, or the commission form of government, except in cases of conflict between the provisions of such sections and the provisions of the special charter of a municipality, or the law governing the commission form of government, in which cases of conflict the provisions of the special charter or the statutes relative to the commission form of government shall control.

SOURCES: Codes, 1942, § 3374-111; Laws, 1950, ch. 491, § 111, eff from and after July 1, 1950.

Cross References — Various forms of municipal government, see §§ 21-3-1 et seq. (code-charter); 21-5-1 et seq. (commission); 21-7-1 et seq. (council); 21-8-1 et seq. (mayor-council); and 21-9-1 et seq. (council-manager).

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

Const. 1890, § 80, 88, among other things providing for general laws to create and govern municipal corporations are prospective in operation and do not repeal existing municipal charters. Therefore this section recognizing the continued existence of such charters is not unconstitutional. Lum v. City of Vicksburg, 72 Miss. 590, 18 So. 476 (1895).

Under this section declaring that after the chapter became operative, every municipality shall be governed by its provisions but that any municipality might within twelve months, "elect not to come under the provisions hereof," power was given municipalities affirmatively to accept the provisions of the chapter and be governed thereby. Ex parte Shlomberg, 70 Miss. 47, 11 So. 721 (1892).

Its corporate authorities having formally accepted the provisions of the Code Chapter, the city of Jackson became bound thereby, and subsequent action of the authorities purporting to rescind the resolution of acceptance, though within twelve months, was ineffectual. Ex parte Shlomberg, 70 Miss. 47, 11 So. 721 (1892).

ATTORNEY GENERAL OPINIONS

Municipal wastewater treatment systems may be operated by long-term contracts with private firms, provided the term of contract does not extend beyond the terms in office of the current governing authorities. Reno, March 6, 1998, A.G. Op. #98-0069.

Public utility commissions and park commissions whose members are appointed officers and do not serve in an advisory capacity alone have the power to manage and control the facilities, including the authority to determine whether the state flag is to be flown at those utilities. Clark, Mar. 21, 2003, A.G. Op. #03-0127.

§ 21-17-15. Establishment of fiscal or financial department in certain municipalities; authority of director.

Within the discretion of the governing authorities of any municipality having a population of seventy-five thousand (75,000) or more according to the latest federal decennial census, there may be established a fiscal or financial department and the director thereof shall be invested with the full authority to act in all financial matters for and on behalf of such municipality as the city clerk is now authorized to act in such matters.

SOURCES: Laws, 1974, ch. 400, eff from and after passage (approved March 25, 1974).

Editor's Note — Laws of 1974, ch. 400, amended § 21-39-19 to add a new paragraph authorizing certain municipalities to establish a fiscal or finance department. Since the subject matter of the added paragraph was not appropriate for Chapter 39 of Title 21, but more properly belonged in Chapter 17 of Title 21, the added paragraph was made to appear as this section.

Cross References — Duties of depository or treasurer, see § 21-39-19.

§ 21-17-17. Authority to set regular meeting dates.

Notwithstanding the provisions of Sections 21-3-19, 21-5-13, 21-7-9 and 21-9-39, Mississippi Code of 1972, the governing authorities of any municipality may by ordinance duly adopted change the day of the week set by the appropriate section hereinabove as their regular monthly or bimonthly meeting date. Before the adoption of any such ordinance, the ordinance shall first be published once a week for at least three (3) consecutive weeks in a newspaper published in or having general circulation within the municipality. Once such regular meeting day has been changed, meetings shall be held as otherwise provided by law.

SOURCES: Laws, 1979, ch. 403, § 1, eff from and after July 1, 1979.

ATTORNEY GENERAL OPINIONS

Where there is no newspaper located in or published in a town, a newspaper within the county having general circulation in the municipality (or if there is none, a newspaper having general circulation within the county) must be used for publication of an ordinance to change the date of board meetings, as is required for the publication of all other ordinances of the municipality pursuant to Section 21-13-11. Thomas, May 30, 2003, A.G. Op. 03-0268.

§ 21-17-19. Publication of substance of public measure or amendment; content; full text to be posted.

(1) Whenever a municipality is required by law to publish in a newspaper any public measure or amendment thereto, the substance of the public measure or amendment thereto may be printed in lieu of the full text of the public measure or amendment thereto, as provided in this Section. Such a public measure shall include, but shall not be limited to, an ordinance, resolution, amendment to a municipal charter or annual audit. The provisions of this section shall not apply to publication of the annual budget or amendments thereto; such publication shall be made as provided in Chapter 35, Title 21, Mississippi Code of 1972.

(2) The substance of the public measure or amendment thereto shall be an explanatory statement summarizing the full text of the public measure or amendment thereto, in which the chief purpose of the measure is explained in clear and unambiguous language. Such statement shall be prepared by the governing authorities of the municipality, and shall not exceed three hundred (300) words in length to the extent practicable.

(3) During the entire time of the publication of the explanatory statement in a newspaper, a copy of the full text of the public measure or amendment thereto shall be posted by the clerk of the municipality (a) at the city hall, (b) at the main public library in the municipality, or at the courthouse in the judicial district or county in which the municipality is located; and in addition, the clerk shall post such copy at least at one (1) other public place in the municipality. The clerk shall furnish any resident of the municipality a copy of the full text of the public measure or amendment thereto upon request, and this shall be stated in the publication of the explanatory statement.

SOURCES: Laws, 1988, ch. 457, § 1, eff from and after December 8, 1988 (the date the United States Attorney General interposed no objection to the addition of this section).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (1). The words "Chapter 25" were changed to "Chapter 35". The Joint Committee ratified the correction at its December 3, 1996 meeting.

Cross References — Publication of ordinances, see § 21-13-11.

Publication of amendments to a municipality's charter, see §§ 21-17-9 and 21-17-11.

Publication of a resolution levying ad valorem taxes, see § 21-33-47.

Publication of an ordinance imposing utility taxes, see § 21-33-207.

Publication of a resolution declaring a municipality's intention to issue bonds, see § 21-33-307.

Publication of a municipality's annual audit, see § 21-35-31.

Publication of a resolution declaring a municipality's intention to make a local or special improvement, see § 21-41-5.

Publication of a notice of a hearing to consider a municipality's intention to establish a parking and business improvement area, see § 21-43-9.

ATTORNEY GENERAL OPINIONS

A municipality may publish the substance of a zoning ordinance, i.e., an explanatory statement summarizing the full text of the ordinance, in which the chief purpose is explained in clear and unambiguous language; in such case, the clerk must post a copy of the full text of the zoning ordinance, along with the maps, charts, diagrams and sketches, at the city hall, main public library or courthouse, and at another public place in the municipality; further, the publication should also specify when and where the full text of the ordinance and any maps are available for review. Donald, August 5, 1999, A.G. Op. #99-0390.

Where a county is amending its zoning ordinance, but the proposed amendments do not change any actual existing zoning of property in the county, the portions that are being amended and the proposed amendments may be published in lieu of publishing the entire ordinance, and the publication should refer to the full text of the proposed amendments on file in the city clerk's office. Evans, Oct. 20, 2000, A.G. Op. #2000-0584.

CHAPTER 19

Health, Safety, and Welfare

Sec.	
21-19-1.	General powers of municipal governing authorities; collection and disposal of garbage and rubbish.
21-19-2.	Development of billing and collection system; defraying costs; increase in ad valorem tax; notice; joint and several liability of generator and property owner; liens.
21-19-3.	Controlling contagious or infectious diseases; establishing pesthouses.
21-19-5.	Establishing hospitals, workhouses, and houses of correction.
21-19-7.	Donating to hospitals and benevolent institutions.
21-19-9.	Controlling running of animals at large; establishment of city pounds; cooperative agreements.
21-19-11.	Determination that property or parcel of land is menace; notification to property owner; hearing; cleaning private property; cost and penalty as assessment against property; appeal.
21-19-12.	Lien amnesty for nonprofits and others interested in developing blighted real estate.
21-19-13.	Changes of streams and bridges; clean drainage ditches and prevent erosion; levying taxes to pay for authorized works.
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21-19-21.	Enacting fire regulations.
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21-19-25.	Adoption, amendment and revision of building and other codes.
21-19-27.	Compelling erection of barriers.
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21-19-33.	Regulations of circuses, shows, theaters, and other amusements.
21-19-35.	Regulation of transient vendors and photographers; power of counties and municipalities; application of county and municipal ordinances.
21-19-37.	Regulation of "going-out-of-business" sales, "fire" sales, and similar sales.
21-19-39.	Adoption of ordinances regulating sale at retail of goods and services on Sunday.
21-19-41.	Contributing to support of federal food stamp program.
21-19-43.	Encouraging establishment of industry.
21-19-44.	Supporting certain local economic development organizations.
21-19-44.1.	Donating to Main Street Project, Incorporated.
21-19-45.	Donating to nonprofit civic and development corporations by certain municipalities.
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21-19-47.	Donating to support bands and orchestras.
21-19-49.	Appropriation of funds or conveyance of buildings and property to school districts by local governments; contracts for provision of additional police protection for schools; off-duty law enforcement officers authorized to use public uniforms and equipment for school security purposes;

municipalities authorized to donate to public school districts for certain purposes.
21-19-51. Donating to fair associations.
21-19-53. Donating to support historical museums by certain municipalities.
21-19-55. Donating to patriotic organizations.
21-19-57. Donating to American Red Cross.
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21-19-59. Donating to state colleges or universities for support of airport by certain municipalities.
21-19-61. Advertising of municipal activities by certain municipalities.
21-19-63. Requiring maps of subdivisions to be furnished and approved; effect of dedication; easement declared abandoned.
21-19-65. Matching funds for social and community service programs.
21-19-67. Annual donations to chartered chapters of the Boys and Girls Clubs of America or the Young Men's Christian Association (YMCA), or to certain certified farmers' markets located within the municipality.
21-19-69. Donating to support certified farmers' market.

§ 21-19-1. General powers of municipal governing authorities; collection and disposal of garbage and rubbish.

(1) The municipal governing authorities of any municipality shall have the power to make regulations to secure the general health of the municipality; to prevent, remove, and abate nuisances; to regulate or prohibit the construction of privy vaults and cesspools, and to regulate or suppress those already constructed; to compel and regulate the connection of all property with sewers and drains; to suppress hog pens, slaughterhouses and stockyards, or to regulate the same and prescribe and enforce regulations for cleaning and keeping the same in order; to regulate and prescribe and enforce regulations for the cleaning and keeping in order of warehouses, stables, alleys, yards, private ways, outhouses, and other places where offensive matter is kept or permitted to accumulate; and to compel and regulate the removal of garbage and filth beyond the corporate limits. The municipal governing authorities are further authorized to adopt and enforce regulations governing the disposal of garbage and rubbish in sanitary landfills owned or leased by the municipality, whether located within or outside of the corporate limits of the municipality, to the extent that such regulations are not in conflict with or prohibited by regulations of the Commission on Environmental Quality adopted under Section 17-17-27.

(2) After December 31, 1992, the governing body of any municipality in the state shall provide for the collection and disposal of garbage and the disposal of rubbish, and for that purpose the governing body shall have the power to:

(a) Establish, operate and maintain a garbage and/or rubbish collection and disposal system or systems;

(b) Acquire property, real or personal, by contract, gift or purchase, necessary or proper for the maintenance and operation of such system;

(c) Make all necessary rules and regulations for the collection and disposal of garbage and/or rubbish not in conflict with or prohibited by rules and regulations of the Commission on Environmental Quality adopted under Section 17-17-27 and, if it so desires, establish, maintain and collect rates, fees and charges for collecting and disposing of such garbage and/or rubbish; and

(d) In its discretion, enter into contracts, in the manner required by law, with individuals, associations or corporations for the establishment, operation and maintenance of a garbage or rubbish disposal system or systems, and/or enter into contracts on such terms as the municipal governing body thinks proper with any other municipality, county or region enabling the municipality to use jointly with such other municipality, county or region any authorized rubbish landfill or permitted sanitary landfill operated by the other municipality, other county or region.

As a necessary incident to such municipal governing authority's power and authority to establish, maintain and collect such rates, fees and charges for collecting and disposing of such garbage and/or rubbish, and as a necessary incident to such municipal governing authority's power and authority to establish, operate and maintain a garbage and/or rubbish disposal system or systems, the municipal governing authority of such municipality shall have the authority to initiate a civil action to recover any delinquent fees and charges for collecting and disposing of such rubbish, and all administrative and legal costs associated with collecting such fees and charges, in the event any person, firm or corporation, including any municipal corporation, shall fail or refuse to pay such fees and charges for collecting and disposing of garbage and/or rubbish; provided that such municipal governing authority may initiate such a civil action to recover such delinquent fees and charges whether or not such municipality has previously entered into a contract with such individual, firm or corporation, relating to the establishment, operation and maintenance of such garbage and/or rubbish disposal system or systems; provided further, that in a civil action to recover such delinquent fees and charges for collecting and disposing of such garbage and/or rubbish, and all administrative and legal costs associated with collecting such fees and charges, the municipality shall in all respects be a proper party to such suit as plaintiff and shall have the power to sue for and recover such unpaid fees and charges, and all administrative and legal costs associated with collecting such fees and charges from any person, firm or corporation, as may fail, refuse or default in the payment of such fees and charges.

SOURCES: Codes, 1892, § 2928; 1906, § 3319; Hemingway's 1917, § 5816; 1930, § 2396; 1942, § 3374-116; Laws, 1950, ch 491, § 116; Laws, 1982, ch. 405, § 1; Laws, 1991, ch. 581, § 30; Laws, 1992, ch. 583 § 14, eff from and after passage (approved May 15, 1992).

Editor's Note — Section 49-2-6 provides that wherever the term "Mississippi Commission on Natural Resources" appears in any law the same shall mean the Mississippi Commission on Environmental Quality.

Cross References — Authority of county and municipal governments to enter into joint agreements for the operation and implementation of solid waste management, see § 17-17-31.

Participation by municipalities in regional solid waste disposal and recovery systems, see § 17-17-33.

Municipality's general powers, see §§ 21-17-1 through 21-17-5.

Power to order cleaning of private property with resultant lien for cost thereof, see § 21-19-11.

Municipalities' contributing to federal food stamp program, see § 21-19-41.

Expending funds for recreational purposes, see § 21-19-45.

Provisions of civil defense law, see §§ 33-15-1 et seq.

Authority to adopt ordinances relating to individual onsite wastewater disposal systems, see § 41-67-15.

Burial of certain dead, see § 43-31-31.

Definitions, jurisdiction, procedure and actions to abate and enjoin nuisances, see §§ 95-3-1 et seq.

JUDICIAL DECISIONS

1. In general.
2. Animals.
3. Regulation of business.
4. —Sanitary contractors.
5. —Barber shops.
6. —Filling stations.
7. —Plumbing.
8. —Fireworks.
9. —Salesmen.
10. Under former law.

1. In general.

No municipal board has right to create a condition which imperils health and welfare of public and create public nuisance, and when it does so, equity court has power to issue injunction directing board to relieve situation, leaving board free to adopt such methods as economy and good engineering may determine. City of Jackson v. Robertson, 208 Miss. 422, 44 So. 2d 523 (1950).

In determining validity of ordinance enacted under statute authorizing municipality to make regulations to secure general health, and prevent spread of contagious diseases, court will not consider wisdom of ordinance but merely whether it constitutes reasonable exercise of power granted. Hartman v. May, 168 Miss. 477, 151 So. 737, 93 A.L.R. 1408 (1934).

The power of the municipality to prohibit and abolish nuisances and cognate matters is limited and the attempted exercise of any excess authority is void. Desporte v. City of Biloxi, 136 Miss. 542, 100 So. 387 (1924).

A condition must constitute a nuisance before a municipality has authority to abate it as such. Desporte v. City of Biloxi, 136 Miss. 542, 100 So. 387 (1924).

2. Animals.

A municipality was negligent in building a hog pond twelve feet from plaintiff's residence and against her protest upon property of the city; it was also actionable negligence to fail to remove a dead hog from such pond after notice. Crawford v. Town of D'Lo, 119 Miss. 28, 80 So. 377 (1919).

It is only when the keeping of hogs in the city is a nuisance that it may be prohibited by ordinance. Comfort v. City of Kosciusko, 88 Miss. 611, 41 So. 268, 5 Am. Ann. Cas. 178 (1906).

A municipal ordinance, declaring it to be a nuisance to erect hog pens within any inclosure in the city limits, or to permit hogs to run at large within any lot or inclosure, except at certain designated places, and providing for their abatement, was held invalid as being too broad. Ex parte O'Leary, 65 Miss. 80, 3 So. 144, 7 Am. St. R. 640 (1887).

3. Regulation of business.

An ordinance making in unlawful for business places to keep open after 11 P.M., and prescribing a penalty for its violation, as applied to a grocery store, constituted a deprivation of property without due process of law and an unreasonable restraint of trade not per se or per accidens a nuisance. Town of McCool v. Blaine, 194 Miss. 221, 11 So. 2d 801 (1943).

Where a city charter empowered the city authorities to regulate and prevent the carrying on of manufactories dangerous in causing or promoting fires and to prevent and remove all nuisances, an ordinance, enacted pursuant thereto, declaring certain manufactories, which because of their dilapidated and defective condition should have become dangerous to persons and property in their vicinity, to be nuisances and subject to prosecution, was valid. Green v. Lake, 60 Miss. 451 (1882).

Although the charter of a municipality empowered the municipal authorities to prevent nuisances and dangerous manufactories and to regulate the latter, the authorities cannot, on petition of citizens, deal thus with a flour mill unless it should be shown to fall within some law or ordinance previously enacted. Lake v. City of Aberdeen, 57 Miss. 260 (1879).

4. —Sanitary contractors.

A city is not liable for damages for negligent performance of work done under an ordinance regulating the cleaning of cesspools and removing garbage, although requiring it to be done only by sanitary contractors chosen by the city. City of Gulfport v. Shepperd, 116 Miss. 439, 77 So. 193 (1918).

5. —Barber shops.

Ordinance forbidding barber shops to open before 7:30 A.M. or remain open after 6:30 P. M. could not be held valid on ground it was designed to fix reasonable time for inspecting barber shops. Knight v. Johns, 161 Miss. 519, 137 So. 509 (1931).

6. —Filling stations.

A municipal ordinance requiring the obtaining of a permit for the construction and operation of a filling station within the municipality after a hearing in which the granting of the permit was made to depend upon traffic conditions and the fire explosive hazards which might impair the public safety, was within the authorization of this section [Code 1942, § 3374-116], since while a gasoline filling station might not be a nuisance per se, the maintenance of one at a place which by reason of traffic conditions or fire explosive hazards would impair the public safety was unquestionably a public nuisance and therefore within this section [Code 1942, § 3374-116]. Gulf Ref. Co. v. City of Laurel, 187 Miss. 119, 192 So. 1 (1939).

7. —Plumbing.

A reasonable fee to be paid by applicants who are required by an ordinance to be examined before doing a plumbing business in a municipality is within the power of the city. City of Vicksburg v. Mullane, 106 Miss. 199, 63 So. 412 (1913).

A municipality may by ordinance impose reasonable regulations with reference to plumbing work therein. City of Vicksburg v. Mullane, 106 Miss. 199, 63 So. 412 (1913).

8. —Fireworks.

Municipal ordinance prohibiting sale, possession, or control of fireworks within the city limits held unauthorized under this section [Code 1942, § 3374-116]. King v. City of Louisville, 207 Miss. 612, 42 So. 2d 813 (1949).

9. —Salesmen.

Where a city passed an ordinance making it unlawful for transient vendors to go in and upon private residences, and in and upon private property and buildings other than residences, without first having been requested or invited to do so by the owner or occupant, for the purpose of soliciting orders for the sale of goods or selling the same, the ordinance was valid as it applied to soliciting in private residences but was invalid as to property and buildings other than residences, which includes primarily business offices and stores. Day v. Klein, 225 Miss. 191, 82 So. 2d 831 (1955).

10. Under former law.

Much must be left to municipal authorities' discretion in exercising granted authority to make regulations to secure general health and to prevent introduction of contagious diseases and presumption favors reasonableness of such regulations. Hartman v. May, 168 Miss. 477, 151 So. 737, 93 A.L.R. 1408 (1934).

Ordinance requiring children's vaccination against smallpox as condition to their admission to public schools held valid as reasonable exercise of power to make regulations to prevent introduction and spread of contagious diseases, though no smallpox epidemic existed. Hartman v. May, 168 Miss. 477, 151 So. 737, 93 A.L.R. 1408 (1934).

ATTORNEY GENERAL OPINIONS

The governing authorities may use a municipal backhoe to bury a dead animal if the owner cannot be identified or located, or it is otherwise necessary to preserve the health, safety and welfare of the community if this is the only option available. Landrum, Nov. 27, 1991, A.G. Op. #91-0896.

Municipalities do not have the authority to clean property owned by a political subdivision of the state. Crump, Dec. 18, 1991, A.G. Op. #91-0936.

Miss. Code Section 21-19-1 requires municipalities after December 31, 1992, to establish, maintain and operate garbage systems. Shivel, Jan. 27, 1993, A.G. Op. #92-1003.

Miss. Code Section 21-19-1(2) authorizes municipalities to collect delinquent fees, as well as administrative and legal costs associated with collecting fees, by initiating civil actions. Shivel, Jan. 27, 1993, A.G. Op. #92-1003.

Municipal governing authorities may repair sewer line on private property and charge owner for service in emergency situation for purpose of preventing contamination of water and sewer system and protecting public health and safety. Peeples, August 8, 1993, A.G. Op. #93-0423.

Municipalities may adopt ordinances to require residents to properly maintain sewer lines on their property, and county health departments have jurisdiction to require property owners to repair sewer lines on their property if a public health hazard exists. Donald, Aug. 8, 1997, A.G. Op. #97-0468.

So long as the provisions of this section and Section 47-5-401 are followed, a municipality may contract with the Mississippi Department of Corrections to use inmate labor for public service work such as the cleaning of private property under this section. Pierce, Dec. 19, 1997, A.G. Op. #97-0676.

Even if a burned building does not pose a menace to the public health and safety of the community, according to engineers, and there is no indication of any other public health hazard, a city may require the owner to clean and clear the property or may itself clean and clear the property to alleviate the eyesore. Donald, January 29, 1999, A.G. Op. #99-0018.

A county board of supervisors may not pick up and dispose of household rubbish within the municipal boundaries of a city without the consent of the municipality. Entrekin, Feb. 18, 2000, A.G. Op. #2000-0059.

Pursuant to this section, a municipality may adopt ordinances requiring owners to properly maintain sewer lines on their property. Brown, Oct. 18, 2002, A.G. Op. #02-0588.

A city may adopt an ordinance which defines and prohibits junk vehicles with exceptions and may enforce the ordinance on a citizen who already had on his property a junk vehicle. Barry, Apr. 7, 2003, A.G. Op. #03-0089.

A town is entitled to terminate or disconnect the sewer service to customers of the sewer system who are not paying their bills for such service. There must be some process by which customers may dispute questionable charges. Richardson, Feb. 2, 2004, A.G. Op. 04-0011.

If a town disconnects a sewer, it may be reconnected to the customers' septic tank. Richardson, Feb. 2, 2004, A.G. Op. 04-0011.

A municipality may disconnect or otherwise terminate sewer service to a customer for failure to comply with provisions of ordinances related to sewer systems if those failures cause a breakdown in the system or unlawful pollution of the city lines or system. Due process must be afforded any customer prior to service being terminated and health and environmental rules must be followed. Richardson, Feb. 2, 2004, A.G. Op. 04-0011.

A municipal governing authority may, upon the proper findings that an organization is club is a social or community service program, waive the regularly assessed tipping fee for use of a landfill. Kerby, Apr. 8, 2005, A.G. Op. 05-0155.

A municipal governing authority may, in its discretion, waive the collection of tipping fees for use of a landfill by municipal and county school districts. Kerby, Apr. 8, 2005, A.G. Op. 05-0155.

Once a fee for the connection of property within a municipality to a sewer has been established, the municipality may not forgive or waive those fees or rates or give a credit for future sewer bills for the equivalent months or years in which a citizen has paid and not been hooked up. Collins, Apr. 29, 2005, A.G. Op. 05-0209.

If a municipality is not operating a garbage collection and disposal system, then the county may designate the area within the municipality as part of the county's solid waste disposal area, assess the same millage as assessed throughout the county, and collect and dispose of the solid waste. Hemphill, Nov. 4, 2005, A.G. Op. 05-0540.

RESEARCH REFERENCES

ALR. Validity of municipal ordinance prohibiting house-to-house soliciting and peddling without invitation. 35 A.L.R.2d 355.

Public dances or dance halls as nuisances. 44 A.L.R.2d 1381.

Validity of statutes, ordinances, and regulations requiring the installation or maintenance of various bathroom facilities in dwelling units. 79 A.L.R.3d 716.

Validity, construction, and application of state or local laws regulating the sale, possession, use, or transport of fireworks. 48 A.L.R.5th 659.

Am Jur. 39 Am. Jur. 2d, Health §§ 1, 3-8, 19-42.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 407 et seq.

7 Am. Jur. Legal Forms 2d, Easements § 94:47 (grant of easement for construction of flood control levees by levee district).

13C Am. Jur. Legal Forms 2d, Nuisances § 188:17 (notice of and request to abate nuisance by public authorities).

5 Am. Jur. Pl & Pr Forms (Rev), Barbers, etc., Forms 2, 3 (barber, complaint to suspend license).

13 Am. Jur. Pl & Pr Forms (Rev), Health, Forms 1-3 (health measures and regulations, enforcement).

18 Am. Jur. Pl & Pr Forms (Rev), Municipal, etc. Tort Liability, Form 81 (claim, crop loss through improper use of dangerous pesticide).

18 Am. Jur. Pl & Pr Forms (Rev), Municipal, etc. Tort Liability, Forms 82, 83 (complaint against municipality, maintenance of attractive nuisance).

18A Am. Jur. Pl & Pr Forms (Rev), Nuisances, Form 1 (complaint, petition, or declaration for equitable relief from nuisance and for damages).

18A Am. Jur. Pl & Pr Forms (Rev), Nuisances, Forms 71 et seq. (pollution of air).

18A Am. Jur. Pl & Pr Forms (Rev), Nuisances, Forms 101 et seq. (pollution of water).

20 Am. Jur. Pl & Pr Forms (Rev), Pollution Control, Form 7.1 (complaint to compel municipality to apply to state department of environmental protection for approval of plans to close sanitary landfill).

24A Am. Jur. Pl & Pr Forms (Rev), Waters, Forms 171 et seq. (water pollution).

8 Am. Jur. Proof of Facts, Nuisances, Proof No. 1 (enjoining nuisance affecting residents).

9 Am. Jur. Proof of Facts, Pollution, Proof No. 1 (pollution of stream by riparian user).

24 Am. Jur. Proof of Facts, Air Pollution § 50 (air pollution as cause of damage suffered).

25 Am. Jur. Proof of Facts, Water Pollution-Sewage and Industrial Wastes §§ 50, 51 (inadequate treatment of sewage and industrial wastes).

26 Am. Jur. Proof of Facts, Community Noise, § 87 (abatement of noise of diesel trucks operated near residential area).

18 Am. Jur. Trials 495, Subterranean Water Pollution.

CJS. 39A C.J.S., Health and Environment §§ 1-10, 16, 17, 26, 32-40, 57-50, 57, 71,101.

62 C.J.S., Municipal Corporations, §§ 164 et seq.

Law Reviews. Rychlak, Common-Law remedies for environmental wrongs: The role of private nuisance. 59 Miss. L. J. 657, Winter, 1989.

Stennis & Dawkins, The Emergence of Regional Landfills in Mississippi. 60 Miss. L. J. 147, Spring 1990.

§ 21-19-2. Development of billing and collection system; defraying costs; increase in ad valorem tax; notice; joint and several liability of generator and property owner; liens.

(1)(a) To defray the cost of establishing, operating and maintaining the system provided for in Section 21-19-1, the governing authority of a municipality may develop a system for the billing and/or collection of any fees or charges imposed on each person furnished garbage and/or rubbish collection and/or disposal service by the municipality or at the expense of the municipality. The governing authority of the municipality shall provide for the collection of the fees or charges.

(b) The governing authority of a municipality may enter into a contract upon mutual agreement with a public or private corporation, nonprofit corporation, planning and development district or a public agency, association, utility or utility district within the area receiving garbage and/or rubbish collection and/or disposal services from the municipality for the purpose of developing, maintaining, operating and administering a system for the billing and/or collection of fees or charges imposed by the municipality for garbage and/or rubbish collection and/or disposal services. The entity with whom the governing authority of a municipality contracts shall notify the governing authority of the municipality monthly of any unpaid fees or charges assessed under this section. Any entity that contracts to provide a service to customers, within the area being served by the municipality's garbage and/or rubbish collection and/or disposal system, may provide a list of its customers to the governing authority of the municipality upon the request of the governing authority.

(2)(a) To defray the cost of establishing and operating the system provided for in Section 21-19-1, the governing body of a municipality may levy an ad valorem tax not to exceed four (4) mills on all taxable property within the area served by the municipality's garbage and/or rubbish collection and/or disposal system. The service area may be comprised of incorporated and/or unincorporated areas within a county; however, no property shall be subject to this levy unless that property is within an area served by a municipality's garbage and/or rubbish collection and/or disposal system. The rate of the ad valorem tax levied under this section shall be shown as a line item on the notice of ad valorem taxes on taxable property owed by the taxpayer.

(b) In addition to or in lieu of any other method authorized to defray the cost of establishing and operating the system provided for in Section 21-19-1, the governing body of a municipality that has established a garbage and/or rubbish collection and/or disposal system may assess and collect fees or charges to defray the costs of such services. The governing authority may assess and collect the fees or charges from each single family residential generator of garbage and/or rubbish. The governing authority also may assess and collect such fees or charges from each industrial, commercial and multi-family residential generator of garbage and/or rubbish for any time period that the generator has not otherwise contracted for the collection of garbage and/or rubbish that is ultimately disposed of at a permitted or authorized nonhazardous solid waste management facility.

(c) Before the adoption of any resolution or ordinance to increase the ad valorem tax assessment or fees or charges authorized by this section, the governing authority of a municipality shall have published a notice advertising their intent to increase the ad valorem tax assessment or fees or charges authorized by this section. The notice shall specify the purpose of the proposed increase, the proposed percentage increase and the proposed percentage increase in total revenues for garbage and/or rubbish collection and/or disposal services or shall contain a copy of any resolution by the governing authority stating their intent to increase the ad valorem tax assessment or fees or charges authorized by this section. The notice shall be published in a newspaper having general circulation in the municipality for no less than three (3) consecutive weeks before the adoption of the order. The notice shall be in print no less than the size of eighteen (18) point and shall be surrounded by a one-fourth (¼) inch black border. The notice shall not be placed in the legal section notice of the newspaper. There shall be no language in the notice inferring a mandate from the Legislature.

In addition to the requirement for publication of notice, the governing authority of a municipality shall notify each person furnished garbage and/or rubbish collection and/or disposal service of any increase in the ad valorem tax assessment or fees or charges authorized by this section. In the case of an increase of the ad valorem tax assessment, a notice shall be conspicuously placed on or attached to the first ad valorem tax bill on which the increased assessment is effective. In the case of an increase in fees or charges, a notice shall be conspicuously placed on or attached to the first bill for fees or charges on which the increased fees or charges are assessed. There shall be no language in any notice inferring a mandate from the Legislature.

(d) The governing authority of a municipality may adopt an ordinance authorizing the granting of exemptions from the fees or charges for certain generators of garbage and/or rubbish. The ordinance shall define clearly those generators that may be exempted and shall be interpreted consistently by the governing authority when determining whether to grant or withhold requested exemptions.

(e) The governing authority may borrow money for the purpose of defraying the expenses of the system in anticipation of:

(i) The tax levy authorized under this section;

(ii) Revenues resulting from the assessment of any fees or charges for garbage and/or rubbish collection and/or disposal; or

(iii) Any combination thereof.

(3)(a) Fees or charges for garbage and/or rubbish collection and/or disposal shall be assessed jointly and severally against the generator of the garbage and/or rubbish and against the owner of the property furnished the service. However, any person who pays, as a part of a rental or lease agreement, an amount for garbage and/or rubbish collection and/or disposal services shall not be held liable upon the failure of the property owner to pay such fees.

(b) Every generator assessed the fees or charges provided for and limited by this section and the owner of the property occupied by that generator shall be jointly and severally liable for the fees and/or charges so assessed. The fees or charges shall be a lien upon the real property offered garbage and/or rubbish collection and/or disposal service.

At the discretion of the governing body of the municipality, fees or charges assessed for the service may be assessed annually. If fees or charges are assessed annually, the fees or charges for each calendar year shall be a lien upon the real property offered the service beginning on January 1 of the next immediately succeeding calendar year. The person or entity owing the fees or charges, upon signing a form provided by the governing authority, may pay the fees or charges in equal installments.

If fees or charges so assessed are assessed on a basis other than annually, the fees or charges shall become a lien on the real property offered the service on the date that the fees or charges become due and payable.

No real or personal property shall be sold to satisfy any lien imposed under this section.

The municipality shall mail a notice of the lien, including the amount of unpaid fees or charges and a description of the property subject to the lien, to the owner of the property subject to the lien.

(c) The municipal governing body shall notify the county tax collector of any unpaid fees or charges assessed under this section within ninety (90) days after such fees or charges are due. Upon receipt of a delinquency notice, the tax collector shall not issue or renew a motor vehicle road and bridge privilege license for any motor vehicle owned by a person who is delinquent in the payment of fees or charges, unless such fees or charges, in addition to any other taxes or fees assessed against the motor vehicle, are paid.

(d) Liens created under this section may be discharged as follows:

(i) By filing with the municipal tax collector a receipt or acknowledgement, signed by the municipality, that the lien has been paid or discharged; or

(ii) By depositing with the municipal tax collector money equal to the amount of the claim, which money shall be held for the benefit of the municipality.

SOURCES: Laws, 1994, ch. 624, § 6, eff from and after July 1, 1994.

ATTORNEY GENERAL OPINIONS

Subsection (d) permits a municipality to enter into contracts with a county enabling the municipality to use a landfill; thus, incurring the expense for a gate fee for garbage and rubbish disposal and approving the claim for same, are authorized by the statute. Snyder, March 17, 2000, A.G. Op. #2000-0136.

Municipal governing authorities may charge their citizens for the collection of solid waste based upon the volume of garbage generated; charges based on volume of garbage generated must be reasonably calculated to meet the costs of the collection/disposal system. Prichard, March 31, 2000, A.G. Op. #2000-0147.

The more specific language of subdivision (2)(d) of this section, which authorizes governing authorities to grant exemptions to certain established categories of generators of garbage or rubbish on a case-by-case basis is controlling over the general language of § 21-27-27, prohibiting systems from furnishing free services. Bobo, Jan. 16, 2004, A.G. Op. 03-0703.

A town that collects it own garbage fees is advised to provide any persons delinquent in payment of fees procedural due process, including notice and an opportunity for a hearing, prior to submitting their names to the county tax collector. Childers, Mar. 24, 2006, A.G. Op. 06-0038.

§ 21-19-3. Controlling contagious or infectious diseases; establishing pesthouses.

The governing authorities of municipalities shall have the power to make regulations to prevent the introduction and spread of contagious or infectious diseases; to make quarantine laws for that purpose, and to enforce the same within five miles of the corporate limits; and to establish pesthouses outside the corporate limits, and to provide for the support and government of the same.

SOURCES: Codes, 1892, § 2950; 1906, § 3341; Hemingway's 1917, § 5838; 1930, § 2417; 1942, § 3374-132; Laws, 1950, ch. 491, § 132; Laws, 1964, ch. 496, §§ 1-4, eff from and after passage (approved March 11, 1964).

Cross References — Exercise of eminent domain by municipality, see § 21-37-47.

Municipalities creating boards of health and passing sanitary laws, see § 41-3-57.

JUDICIAL DECISIONS

1. In general.

Much must be left to municipal authorities' discretion in exercising granted authority to make regulations to secure general health and to prevent introduction of contagious diseases and presumption favors reasonableness of such regulations. Hartman v. May, 168 Miss. 477, 151 So. 737, 93 A.L.R. 1408 (1934).

Ordinance requiring children's vaccination against smallpox as condition to their admission to public schools held valid as reasonable exercise of power to make regulations to prevent introduction and spread of contagious diseases, though no smallpox epidemic existed. Hartman v. May, 168 Miss. 477, 151 So. 737, 93 A.L.R. 1408 (1934).

In determining validity of ordinance enacted under statute authorizing municipality to make regulations to secure general health and prevent spread of contagious diseases, court will not consider wisdom of ordinance but merely whether it constitutes reasonable exercise of power granted. Hartman v. May, 168 Miss. 477, 151 So. 737, 93 A.L.R. 1408 (1934).

Ordinance forbidding barber shops to open before 7:30 a.m. or remain open after 6:30 p.m. could not be held valid on ground it was designed to fix reasonable time for inspecting barber shops. Knight v. Johns, 161 Miss. 519, 137 So. 509 (1931).

The court itself should construe a municipal ordinance and not submit it to a jury for construction. Town of Pass Christian v. Washington, 81 Miss. 470, 34 So. 225 (1903).

An ordinance appointing a physician health officer of a municipality and directing him to take "the necessary sanitary precautions for the general good and health of the town," is not a contract binding the municipality to pay the physician for professional services rendered patients. Town of Pass Christian v. Washington, 81 Miss. 470, 34 So. 225 (1903).

ATTORNEY GENERAL OPINIONS

There is no authority to enforce an ordinance compelling the connection of property located outside the municipal corporate limits to sewers and drains under the statute. Meyer, July 24, 1998, A.G. Op. #98-0405.

The legislative intent is to authorize municipalities to prevent public health hazards and, therefore, the governing authorities of municipalities may go onto private property to eliminate pigeons or to perform minor carpentry work to prevent pigeons from roosting where they have grown to constitute a health problem. Tullos, November 20, 1998, A.G. Op. #98-0682.

It is legal for the municipal governing authorities to permit city personnel to enter onto private property such as backyards and other spaces, with the owner's permission, to spray for mosquitoes, where the governing authorities have found and determined that to do so will protect the public health and safety or will abate a public nuisance. Fernald, Sept. 12, 2003, A.G. Op. 03-0488.

It is legal for a city to pass an ordinance which allows entry onto private property for the purpose of spraying for mosquitoes; however, to enter onto private property to spray for mosquitoes against the wishes of the landowner would require due process, either pursuant to 21-19-11 or otherwise. Fernald, Sept. 12, 2003, A.G. Op. 03-0488.

RESEARCH REFERENCES

Am Jur. 39 Am. Jur. 2d, Health §§ 24, 26-34.

13 Am. Jur. Pl & Pr Forms (Rev), Habeas Corpus, Forms 177 (restraint by noncriminal court order, diseased persons).

13 Am. Jur. Pl & Pr Forms (Rev), Health, Forms 16-20, 33 (quarantine, rights, duties and liabilities of governmental entities and employees).

19A Am. Jur. Pl & Pr Forms (Rev), Physicians, Surgeons and Other Healers, Form 353 (complaint, petition, or declaration, plaintiff improperly diagnosed as suffering from dangerous communicable disease, plaintiff quarantined in hospital until condition correctly diagnosed).

CJS. 39A C.J.S., Health and Environment §§ 14, 18-30, 36.

§ 21-19-5. Establishing hospitals, workhouses, and houses of correction.

The governing authorities of municipalities shall have the power and authority to erect, establish and regulate hospitals, workhouses, and houses of correction in the corporate limits, or within three miles thereof, and to provide for the government and support of same.

SOURCES: Codes, 1892, § 2962; 1906, § 3358; Hemingway's 1917, § 5855; 1930, § 2435; 1942, § 3374-144; Laws, 1950, ch. 491, § 144, eff from and after July 1, 1950.

Cross References — Counties donating for certain hospitals, see § 19-5-93.
Exercise of eminent domain by municipality, see § 21-37-47.
Establishment of community hospitals and health centers, see §§ 41-13-15 et seq.

Municipalities establishing public ambulance service, see § 41-55-1.
Poor persons generally, see §§ 43-31-1 et seq.

RESEARCH REFERENCES

Am Jur. 7 Am. Jur. Legal Forms 2d, Dedication, §§ 86:21-86:83 (dedication of land).

13A Am. Jur. Pl and Pr Forms (Rev), Hospitals, etc., Form 49 (injuries, nonliability of city hospital).

13A Am. Jur. Pl & Pr Forms (Rev), Hospitals, etc., Forms 1-10 (hospitals, licensing and regulation).

8 Am. Jur. Trials 57, Condemnation of Rural Property for Highway Purposes.

11 Am. Jur. Trials 57, Condemnation of Urban Property.

§ 21-19-7. Donating to hospitals and benevolent institutions.

The governing authorities of municipalities shall have the power and authority to donate a sum, not to exceed One Hundred Dollars ($100.00) per month, to maintain a charity ward or wards in any hospital situated in the same county in which such municipality is located.

All municipalities within the several counties of this state bordering on the tidewater of the Gulf of Mexico, are hereby authorized and empowered, in the discretion of the proper authorities thereof, to appropriate such a sum of money as said authorities shall deem reasonable, to provide and maintain a charity ward or wards, in any of the hospitals in said municipalities, or, in the discretion of said authorities, to make and enter into contracts with any such hospitals for the treatment and care in such hospitals of the indigent sick of said municipalities, and to pay therefor out of the general fund of such municipalities such sum or sums, as shall be a reasonable and just compensation to said hospital.

In addition, the governing authorities of municipalities shall have the power and authority to donate and furnish free of charge lights, power and water from municipally-owned electric light and water plants to hospitals or benevolent institutions located within any such municipality.

SOURCES: Codes, 1892, § 2962; 1906, § 3358; Hemingway's 1917, §§ 3798, 3810, 3811, 5855; Hemingway's 1921 Supp § 3811c; 1930, §§ 290, 2435; 1942, §§ 2998, 3374-144; Laws, 1908, ch. 134; Laws, 1916, chs. 143, 235; Laws, 1918, ch. 205; Laws, 1920, ch. 289; Laws, 1922, ch. 302; Laws, 1924, chs. 217, 222; Laws, 1926, chs. 204, 212, 305, 306; Laws, 1928, chs. 233, 236; Laws, 1930, chs. 33, 56, 185; Laws, 1938, chs. 299, 326; Laws, 1950, ch. 491, § 144; Laws, 1956, ch. 181; Laws, 1958, ch. 212; Laws, 1962, ch. 251, eff from and after passage (approved June 1, 1962).

Cross References — Counties donating for certain hospitals, see § 19-5-93.
Establishment and operation of libraries, see §§ 39-3-1 et seq.
Establishing public ambulance service, see § 41-55-1.
Poor persons generally, see §§ 43-31-1 et seq.

JUDICIAL DECISIONS

1. In general.

County cannot appropriate money to private corporation. Brister v. Leflore County, 156 Miss. 240, 125 So. 816 (1930).

ATTORNEY GENERAL OPINIONS

Section 66 of the Mississippi Constitution prohibits a municipality from donating water to a church for any "sectarian purpose". Creekmore, Nov. 22, 2005, A.G. Op. 05-0408.

§ 21-19-9. Controlling running of animals at large; establishment of city pounds; cooperative agreements.

The governing authorities of municipalities shall have the power to prevent or regulate the running at large of animals of all kinds, and to cause such as may be running at large to be impounded and sold to discharge the costs and penalties provided for the violation of such regulations and the expense of impounding and keeping and selling the same; to regulate and provide for the taxing of owners and harborers of dogs, and to destroy dogs running at large, unless such dogs have proper identification indicating that said dogs have been vaccinated for rabies; and to provide for the erection of all needful pens, pounds and buildings for the use of the municipality, within or without the municipal limits, and to appoint and confirm keepers thereof, and to establish and enforce rules governing the same.

The governing authorities of municipalities may enter into pacts, agreements or contracts with other municipalities to provide for cooperation in the use or erection of all pens, pounds and buildings to prevent or regulate the running at large of animals of all kinds.

SOURCES: Codes, 1892, § 2975; 1906, § 3370; Hemingway's 1917, § 5867; 1930, § 2448; 1942, § 3374-153; Laws, 1896, p. 188; Laws, 1950, ch. 491, § 153; Laws, 1980, ch. 326 eff from and after July 1, 1980.

Editor's Note — Laws of 1974, ch. 560, purported to amend this section to confer upon the governing authorities of certain counties powers similar to those conferred by this section upon governing authorities of municipalities. However, since such powers are given to the governing authorities of some counties by § 19-5-50, the 1974 amendment has been made into subsection (2) of said § 19-5-50.

Cross References — Control of animals running at large in counties, see § 19-5-50.

Exercise of eminent domain by municipality, see § 21-37-47.

Dogs running at large on campuses and streets of colleges and universities, see § 37-105-7.

Duties of conservation officer with respect to dogs running at large, see § 41-53-11.

Penalties against owners of dogs found running at large, see § 41-53-13.

Provisions of general stock law, see §§ 69-13-1 et seq.

Livestock roaming at large on public highways being prohibited, see §§ 69-13-101 et seq.

JUDICIAL DECISIONS

1. In general.

Section 21-19-9, authorizing municipalities to regulate the running at large of animals of all kinds, authorized a municipality to impound dogs even though those dogs had been vaccinated and registered. The destruction of a dog after five days' posted notice, pursuant to an ordinance enacted under the authority of this section, did not amount to a taking of private property without due process of law. City of Water Valley v. Trusty, 343 So. 2d 471 (Miss. 1977).

This section [Code 1942, § 3374-153] does not make city pound keepers members of the police force, but implies the contrary. City of Hattiesburg v. Jackson, 235 Miss. 109, 108 So. 2d 596 (1959).

A dog found on the street and unaccompanied by its owner or master will be deemed to be running at large within the meaning of such ordinance. Julienne v. Mayor of Jackson, 69 Miss. 34, 10 So. 43 (1891).

A municipality may, in the exercise of its police power conferred by charter, provide by ordinance that unmuzzled dogs running at large shall be killed. Such ordinance violates no constitutional right of the owner although his property be destroyed without notice to him. Julienne v. Mayor of Jackson, 69 Miss. 34, 10 So. 43 (1891).

ATTORNEY GENERAL OPINIONS

Miss. Code Section 21-19-9 authorizes cities to regulate animals running at large and to impound them. Edens, Apr. 28, 1993, A.G. Op. #93-0264.

RESEARCH REFERENCES

ALR. Modern status of rule of absolute or strict liability for dogbite. 51 A.L.R.4th 446.

Am Jur. 4 Am. Jur. 2d, Animals §§ 90 et seq.

37 Am. Jur. Proof of Facts 2d 711, Justifiable Destruction of Animal.

§ 21-19-11. Determination that property or parcel of land is menace; notification to property owner; hearing; cleaning private property; cost and penalty as assessment against property; appeal.

(1) To determine whether property or parcel of land located within a municipality is in such a state of uncleanliness as to be a menace to the public health, safety and welfare of the community, a governing authority of any municipality shall conduct a hearing, on its own motion, or upon the receipt of a petition signed by a majority of the residents residing within four hundred (400) feet of any property or parcel of land alleged to be in need of the cleaning. Notice shall be provided to the property owner by:

(a) United States mail two (2) weeks before the date of the hearing mailed to the address of the subject property and to the address where the ad valorem tax notice for such property is sent by the office charged with collecting ad valorem tax; and

(b) Posting notice for at least two (2) weeks before the date of a hearing on the property or parcel of land alleged to be in need of cleaning and at city hall or another place in the municipality where such notices are posted.

Any notice required by this section shall include language that informs the property owner that an adjudication at the hearing that the property or parcel of land is in need of cleaning will authorize the municipality to reenter the property or parcel of land for a period of one (1) year after final adjudication without any further hearing if notice is posted on the property or parcel of land and at city hall or another place in the municipality where such notices are generally posted at least seven (7) days before the property or parcel of land is reentered for cleaning. A copy of the required notice mailed and posted as required by this section shall be recorded in the minutes of the governing authority in conjunction with the hearing required by this section.

If, at such hearing, the governing authority shall adjudicate the property or parcel of land in its then condition to be a menace to the public health, safety and welfare of the community, the governing authority, if the owner does not do so himself, shall proceed to clean the land, by the use of municipal employees or by contract, by cutting grass and weeds; filling cisterns; removing rubbish, abandoned or dilapidated fences, outside toilets, abandoned or dilapidated buildings, slabs, personal property, which removal of personal property shall not be subject to the provisions of Section 21-39-21, and other debris; and draining cesspools and standing water therefrom. The governing authority may by resolution adjudicate the actual cost of cleaning the property and may also impose a penalty not to exceed One Thousand Five Hundred Dollars ($1,500.00) or fifty percent (50%) of the actual cost, whichever is more. The cost and any penalty may become a civil debt against the property owner, and/or, at the option of the governing authority, an assessment against the property. The "cost assessed against the property" means either the cost to the municipality of using its own employees to do the work or the cost to the municipality of any contract executed by the municipality to have the work done, and administrative costs and legal costs of the municipality. For subsequent cleaning within the one-year period after the date of the hearing at which the property or parcel of land was adjudicated in need of cleaning, upon seven (7) days' notice posted both on the property or parcel of land adjudicated in need of cleaning and at city hall or another place in the municipality where such notices are generally posted, and consistent with the municipality's adjudication as authorized in this subsection (1), a municipality may reenter the property or parcel of land to maintain cleanliness without further notice or hearing no more than six (6) times in any twelve-month period with respect to removing abandoned or dilapidated buildings, slabs, dilapidated fences and outside toilets, and no more than twelve (12) times in any twenty-four-month period with respect to cutting grass and weeds and removing rubbish, personal property and other debris on the land, and the expense of cleaning of the property, except as otherwise provided in this section for removal of hazardous substances, shall not exceed an aggregate amount of Twenty Thousand Dollars ($20,000.00) per year, or the fair market value of the property subsequent to cleaning, whichever is more. The aggregate cost of removing hazardous substances will be the actual cost of such removal to the municipality and shall not be subject to the Twenty Thousand Dollar ($20,000.00) limitation provided in this subsection. The governing authority may assess the same penalty for each time the property or land is cleaned as otherwise provided in this section. The penalty provided herein shall not be assessed against the State of Mississippi upon request for reimbursement under Section 29-1-145, nor shall a municipality clean a parcel owned by the State of Mississippi without first giving notice.

(2) If the governing authority declares, by resolution, that the cost and any penalty shall be collected as a civil debt, the governing authority may authorize the institution of a suit on open account against the owner of the property in a court of competent jurisdiction in the manner provided by law for the cost and any penalty, plus court costs, reasonable attorney's fees and interest from the date that the property was cleaned.

(3)(a) If the governing authority declares that the cost and any penalty shall be collected as an assessment against the property, then the assessment above provided for shall be a lien against the property and may be enrolled in the office of the circuit clerk of the county as other judgments are enrolled, and the tax collector of the municipality shall, upon order of the board of governing authorities, proceed to sell the land to satisfy the lien as now provided by law for the sale of lands for delinquent municipal taxes. The lien against the property shall be an encumbrance upon the property and shall follow title of the property.

(b)(i) All assessments levied under the provisions of this section shall be included with municipal ad valorem taxes and payment shall be enforced in the same manner in which payment is enforced for municipal ad valorem taxes, and all statutes regulating the collection of other taxes in a municipality shall apply to the enforcement and collection of the assessments levied under the provisions of this section, including utilization of the procedures authorized under Sections 17-13-9(2) and 27-41-2.

(ii) All assessments levied under the provisions of this section shall become delinquent at the same time municipal ad valorem taxes become delinquent. Delinquencies shall be collected in the same manner and at the same time delinquent ad valorem taxes are collected and shall bear the same penalties as those provided for delinquent taxes. If the property is sold for the nonpayment of an assessment under this section, it shall be sold in the manner that property is sold for the nonpayment of delinquent ad valorem taxes. If the property is sold for delinquent ad valorem taxes, the assessment under this section shall be added to the delinquent tax and collected at the same time and in the same manner.

(4) All decisions rendered under the provisions of this section may be appealed in the same manner as other appeals from municipal boards or courts are taken.

(5) Nothing contained under this section shall prevent any municipality from enacting criminal penalties for failure to maintain property so as not to constitute a menace to public health, safety and welfare.

SOURCES: Codes, 1930, §§ 2456, 2457; 1942, § 3374-171; Laws, 1922, ch. 220; Laws, 1950, ch. 491, § 171; Laws, 1962, ch. 545; Laws, 1964, ch. 498; Laws, 1966, ch. 593, § 1; Laws, 1971, ch. 360, § 1; Laws, 1976, ch. 335; Laws, 1977, ch. 330; Laws, 1985, ch. 350; Laws, 1987, ch. 321; Laws, 1989, ch. 322, § 1; Laws, 1991, ch. 395, § 1; Laws, 1992, ch. 479 § 1; Laws, 2001, ch. 576, § 1; Laws, 2005, ch. 427, § 1; Laws, 2009, ch. 503, § 1; Laws, 2010, ch. 471, § 1; Laws, 2010, ch. 475, § 1; Laws, 2014, ch. 372, § 1; Laws, 2014, ch. 473, § 1, eff from and after passage (approved Apr. 2, 2014.)

Joint Legislative Committee Note — Section 1 of ch. 471, Laws of 2010, effective July 1, 2010 (approved April 1, 2010), amended this section. Section 1 of ch. 475, Laws of 2010, effective from and after passage (approved April 1, 2010), also amended this section. As set out above, this section reflects the language of both amendments, pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 22, 2010, meeting of the Committee.

Section 1 of ch. 372, Laws of 2014, effective July 1, 2014, amended this section. Section 1 of ch. 473, Laws of 2014, effective from and after passage (approved April 2, 2014), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 24, 2014, meeting of the Committee.

Editor's Note — Laws of 2010, ch. 471, § 2 provides:

"It is the intent of the Legislature that the amendments contained in Section 1 of this bill shall be integrated with the amendments contained in House Bill No. 1412 [ch. 475], 2010 Regular Session, without regard to the effective date of such acts."

Laws of 2010, ch. 475, § 2 provides:

"It is the intent of the Legislature that the amendments contained in Section 1 of this bill shall be integrated with the amendments contained in House Bill No. 1281 [ch. 471], 2010 Regular Session, without regard to the effective date of such acts."

Amendment Notes — The first 2014 amendment (ch. 372), in the third paragraph of (1)(b), inserted "abandoned or" preceding "dilapidated buildings" in the first and fifth sentences, inserted "except as otherwise provided in this section for removal of hazardous substances" and substituted "more" for "less" in the fifth sentence, and inserted the sixth sentence.

The second 2014 amendment (ch. 473), in the second paragraph of (1)(b), inserted "final adjudication" in the first sentence; in the third paragraph of (1)(b), inserted "abandoned or" preceding "dilapidated fences," and inserted "slabs" in the first sentence, substituted "and/or" for "or" in the third sentence, inserted "abandoned or" preceding "dilapidated buildings," "slabs," and "except as otherwise provided in this section for removal of hazardous substances," and substituted "more" for "less" in the fifth sentence, and added the sixth sentence; in (3)(a), substituted "declares" for "does not declare" and "an assessment against the property" for "a civil debt" in the first sentence and added the last sentence.

Cross References — Regulation of massage parlors, see § 19-5-103.

Municipal authorities' powers in securing general health of municipality, see § 21-19-1.

Proceedings to demolish abandoned houses or buildings used for sale or use of drugs, see § 21-19-20.

Interlocal agreement for collection by county of ad valorem taxes or unpaid special assessments as provided in this section due to municipality, see § 27-41-2.

State plant board's assistance in eradicating insect pests and plant disease, see § 69-25-33.

JUDICIAL DECISIONS

1. Notice of hearing.
2. Menace properly found.

1. Notice of hearing.

Plaintiff property owner testified that despite a mistaken property description in the notices he received, he knew which property the defendant city was referring to and did not realize the legal description was not for that property until after the property had already been torn down by the city and he was provided two weeks notice and a chance to be heard pursuant to Miss. Code Ann. § 21-19-11. Pearson v. City of Louisville, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 89580 (N.D. Miss. Nov. 4, 2008).

A property owner was provided the two weeks written notice required by subsection (1) where timely notice was sent to and received by a co-owner, as evidenced by her signature on a certified mail receipt. Bray v. City of Meridian, 723 So. 2d 1200 (Ct. App. 1998).

2. Menace properly found.

City council's actions in finding a property owner's four properties were a menace were not arbitrary and capricious because the property owner admitted that his yards were messy and a video clearly showed that the properties were a mess. Vazzana v. City of Greenville, 116 So. 3d 1103 (Miss. Ct. App. 2013).

ATTORNEY GENERAL OPINIONS

Municipality may defer imposition of cost of cleaning real estate until next meeting of governing authority after work is completed; cost and any penalty may become assessment against property and assessment is lien against property and may be enrolled in office of circuit clerk of county; upon order of board of governing authorities, tax collector will sell property to satisfy lien. Ewing, May 16, 1990, A.G. Op. #90-0339.

City may drain standing water formerly contained by dam on private property not maintained by its owner, but may not restore dam and pond. Henderson, July 8, 1992, A.G. Op. #92-0464.

City cannot impose lien on state-owned property pursuant to Miss. Code Section 21-19-11. Lamar, Jan. 15, 1993, A.G. Op. #92-1002.

Section 21-19-11 is enforceable against undeveloped properties. Mercer, March 25, 1994, A.G. Op. #94-0155.

So long as the provisions of this section and Section 47-5-401 are followed, a municipality may contract with the Mississippi Department of Corrections to use inmate labor for public service work such as the cleaning of private property under this section. Pierce, Dec. 19, 1997, A.G. Op. #97-0676.

A municipality may not extinguish a lien obtained in connection with cleaning/removal assessments even if the property is acquired by and the purposes of Habitat for Humanity. Horne, March 27, 1998, A.G. Op. #98-0089.

Pursuant to this section, and after the notice and hearing required thereby, the governing authority of a municipality may find, consistent with fact, and encompass such findings in an order spread upon its minutes, that a parcel of land is in such a state of uncleanliness as to be a menace to the public health and safety of a community. Donald, January 29, 1999, A.G. Op. #99-0018.

A city has no obligation to remove debris located in a stream or drainage way to assist an industry in performing testing and remediation; however, should the municipal governing authorities make the factual determination that such work is necessary for the promotion of the health, comfort, or convenience of inhabitants of the municipality, they may authorize the expenditure of municipal funds on drainage work on a natural water course, which may include the removal of impediments to the natural flow of water through the water course. Lawrence, Apr. 23, 2001, A.G. Op. #01-0233.

The statute authorizes municipal governing authorities to clean property which has been adjudicated to be a menace to the public health and safety and to assess the cost as a lien against the property after following the procedures in the statute, including giving the owner notice and a opportunity to be heard at a hearing; the statute authorizes governing authorities to clean property by removing rubbish and debris, which may include abandoned or junk vehicles. Povall, Oct. 12, 2001, A.G. Op. #01-0641.

Property sold pursuant to Section 21-19-11 may be sold by the county for the benefit of the city pursuant to an interlocal agreement but may not be included in the unified tax sale. Beam, Dec. 6, 2002, A.G. Op. #02-0607.

This section does not require notice to a lienholder before taking action to clean property or demolish a structure that has been determined to be in a condition posing a menace to the public health and safety. Alexander, Dec. 6, 2002, A.G. Op. #02-0704.

Provided a municipality has complied with all the procedural requirements of this section, a county has the authority to lend equipment and operators to the municipality to perform demolition work. With specific statutory authority such as that found in Section 17-5-15, there would be no requirement to enter into an Interlocal Cooperation Agreement to perform the work. McWilliams, July 25, 2003, A.G. Op. 03-0372.

Generally, municipalities may not use public funds and equipment on private property except when such use is incidental to a proper municipal purpose, such as cleaning property pursuant to this section. No authority can be found for a municipality to clean ditches and mow grass in the ditches on private property or to mow grass adjacent to but not on the rights-of-way of city streets with the permission of the landowners. Fernald, Aug. 8, 2003, A.G. Op. 03-0408.

After following all procedures set forth in this section, a municipality may enter property and cut weeds and/or high grass and spray herbicide; as this spraying can be properly classified as "cleaning," it is appropriate to assess the cost of such cleaning. Artman, Aug. 29, 2003, A.G. Op. 03-0455.

It is legal for the municipal governing authorities to permit city personnel to enter onto private property such as backyards and other spaces, with the owner's permission, to spray for mosquitoes, where the governing authorities have found and determined that to do so will protect the public health and safety or will abate a public nuisance. Fernald, Sept. 12, 2003, A.G. Op. 03-0488.

In the exercise of its powers under § 21-19-21, a municipality is not specifically required to utilize the same procedures for notice and hearing set forth in § 21-19-11. The municipality may enact its own provisions with regard to notice to property owners. Baker, Nov. 21, 2003, A.G. Op. 03-0615.

A municipality is not limited to the $10,000.00 amount found in § 21-19-11 for the cleaning of property pursuant to that section. There is no limitation on the amount which may be expended to "take down and remove buildings, walls, and super structures." Baker, Nov. 21, 2003, A.G. Op. 03-0615.

A municipality may not simply add a criminal penalty to the process of cleaning property as found in this section. Miller, June 4, 2004, A.G. Op. 04-0173.

By use of the word "may" in this section the legislature indicated its intent to make the decision whether to adjudicate the cost of the cleaning to the owner of the property a discretionary one. Further, the municipality may accept a gift of property for a museum. White, Aug. 20, 2004, A.G. Op. 04-0412.

A town may utilize the procedures outlined in this section for cleaning or cutting tall grass on private property, regardless of whether the property is owned by an individual or business. Bankston, Aug. 27, 2004, A.G. Op. 04-0427.

Any parcel of property located within a municipality may be cleaned by the municipality, upon a factual determination by the governing authorities the property is in a state of uncleanliness so as to constitute a menace to the public health and safety of the community. The fact that there is a lien on the property does not interfere with the municipality's authority to clean the property upon the failure of the owner to do and there is no requirement that a lienholder receive any notice of the action. Robinson, Mar. 11, 2005, A.G. Op. 05-0105.

Although the cost of employing an engineer to survey and delineate the boundaries of properties in need of cleaning cannot be included in the calculation of the actual cost of cleaning the property, a municipality may, by imposition of a penalty, recoup its expenses for any survey or delineation. Campbell, Apr. 8, 2005, A.G. Op. 05-0162.

Some municipalities, in accordance with their responsibilities under Sections 21-19-1 et seq., proclaim neighborhood clean-up days and encourage residents and volunteers to properly maintain property within the municipality by making drop-off containers for debris and other acceptable materials available and accessible at different locations in the municipalities. Welch, May 26, 2006, A.G. Op. 06-0205.

In a situation in which the record owner of a parcel of property is known or believed to be deceased, the notice must be published as well as mailed to the address currently listed in the land rolls. Logan, May 26, 2006, A.G. Op. 06-0204.

Section 21-19-11 does not authorize the sale of personal property removed from a parcel for the purpose of mitigating or offsetting the expenses of cleaning the property. This does not mean that a municipality may not dispose of abandoned personal property acquired by virtue of cleaning private property. In such case, the municipality may utilize the mechanism provided by Section 21-39-21 for disposal of lost, stolen or abandoned personal property. Maxey, May 19, 2006, A.G. Op. 06-0193.

Consistent with Section 21-19-11 (as amended), a municipality may enact, by ordinance, criminal penalties for the failure of an owner to maintain privately-owned property in a clean state. Davis, Oct. 27, 2006, A.G. Op. 06-0527.

If notice by mail is returned by the post office unclaimed, the state is required to take additional reasonable steps to attempt to provide notice to the owner before selling the property, if practicable. Henry, Nov. 17, 2006, A.G. Op. 06-0416.

Only actual costs of property clean-up may be recouped from a property owner by a municipality under Miss. Code Ann. § 21-19-11. Legal fees, surveys, and other administrative expenses do not qualify as actual costs of clean-up and may not be recovered in the manner prescribed by the statute. The municipality could, however, adopt a criminal ordinance as contemplated in the statute, and could assess a criminal penalty against the property owner in an effort to recoup its expenses. Turnage, February 9, 2007, A.G. Op. #07-00026, 2007 Miss. AG LEXIS 15.

A town may treat expenses for cleaning property either as a civil debt or as a lien on the property. A lien is to be treated exactly as a lien for delinquent taxes and thus remains viable through any foreclosure proceedings. In a sale to recover the lien amount, a town must follow the procedures for notice, time of sale, and the like pursuant to Miss. Code Ann. § 27-41-55 et seq. Maxey, March 2, 2007, A.G. Op. #07-00088, 2007 Miss. AG LEXIS 83.

A municipality may sell property subject to a lien for delinquent cleaning costs created under the provisions of Miss. Code Ann. § 21-19-11, and may, via an interlocal agreement, authorize a county to conduct a tax sale on behalf of the city for the purpose of selling said private property in a manner consistent with property sold for delinquent municipal taxes. Tucker, March 16, 2007, A.G. Op. #07-00126, 2007 Miss. AG LEXIS 110.

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 438, 439, 448-452.

1B Am. Jur. Pl & Pr Forms (Rev), Animals, Form 7.1 (complaint, petition, or declaration by municipality against homeowner for injunction enjoining homeowner from keeping pigeon and large number of cats in home and to require homeowner to clean and fumigate home, condition of home constitutes health hazard).

1B Am. Jur. Pl & Pr Forms (Rev), Animals, Form 8.1 (order enjoining property owner from residing in home until it has been cleaned and fumigated and requiring property owner to submit cats to veterinarian for examination).

18A Am. Jur. Pl & Pr Forms (Rev), Notice, Form 1 (notice, general form).

18A Am. Jur. Pl & Pr Forms (Rev), Notice, Forms 24, 25 (affidavit of notice by posting or publication).

§ 21-19-12. Lien amnesty for nonprofits and others interested in developing blighted real estate.

(1) The governing authority of any municipality may forgive liens imposed on real property for the costs, fines, penalties and other assessments associated with the municipality's cleaning of real property pursuant to Section 21-19-11, Mississippi Code of 1972, subject to the following:

(a) The real property must be in a blighted condition if it has been vacant and in a deteriorated condition which necessitated the municipality's imposition of a lien in order to correct specific code violations.

(b) The liens imposed by the municipality must have been in existence and declared uncollectible for a period of at least two (2) years.

(c) The real property must be purchased by a nonprofit entity or for-profit developer and converted from its blighted condition. For purposes of this section, "nonprofit" entity means an association, organization, or corporation which is a nonprofit organization in accordance with Section 501(c) (3) of the Internal Revenue Code and provides proof of its tax exempt status. "For-profit developer" means an individual partnership or corporation other than the real property's owner who purchases property considered to be in blighted condition and converts it to productive use.

(d) The nonprofit entity or for-profit developer must have obtained the blighted estate for a sum not exceeding seventy percent (70%) of the real estate's appraised value.

(2) The for-profit developer or nonprofit entity must file an application with the municipality seeking lien amnesty. The application must include the following:

(a) The contract of sale;

(b) Appraisal reports from two (2) reputable real estate appraisers; and

(c) Plans for the real estate's development and anticipated use.

(3) The for-profit developer or nonprofit entity may be granted conditional lien amnesty and allowed eighteen (18) months to develop the blighted real property. For good cause shown, the municipality may allow the for profit

developer or nonprofit entity an additional six (6) to twelve (12) months to develop the blighted property.

(4) If the blighted property remains undeveloped after eighteen (18) months and the municipality has not extended the period for development of the real estate, the nonprofit entity or for-profit developer must pay the principal amount of the municipality's lien plus interest at the rate of eight percent (8%) per annum.

(5) If the nonprofit entity or for-profit developer desires to sell or dispose of the real property prior to its development, the nonprofit entity or for-profit developer must first obtain the municipality's approval. If the municipality approves the sale or disposal of the real estate prior to development, the nonprofit entity or for-profit developer shall pay the principal amount of the lien on or before the closing date of the sale unless a subsequent purchaser of the blighted real property has applied for and been granted conditional lien amnesty.

(6) If a for-profit developer or nonprofit entity sells or disposes of the real property prior to development from its blighted condition without the municipality's approval, then the for-profit developer or nonprofit entity shall be liable to the city for the principal amount of the lien plus interest at the rate of eight percent (8%), and a penalty of One Thousand Five Hundred Dollars ($1,500.00) will also be assessed against the developer.

(7) Conditional lien amnesty may not be sold, conveyed, transferred or assigned.

(8) No lien imposed upon real property pursuant to the provisions of Section 21-19-11 shall be finally released until real property in a blighted condition has been developed according to plan.

SOURCES: Laws, 2002, ch. 375, § 1; Laws, 2004, ch. 327, § 1, eff from and after July 1, 2004.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the second sentence of Subsection (3). The word "entity" was inserted following "nonprofit." The Joint Committee ratified the correction at its June 3, 2003 meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an enacting error in the last sentence of subsection (3). The words "for-profit" and "entity" were inserted preceding "developer" and following "non-profit" respectively. In the last sentence of subsection (5), "real" was substituted for "realty." The Joint Committee ratified the correction at its July 8, 2004 meeting.

Federal Aspects — Nonprofit organization in accordance with § 501(c)(3) of the Internal Revenue Code, see 26 USCS § 501(c)(3).

§ 21-19-13. Changes of streams and bridges; clean drainage ditches and prevent erosion; levying taxes to pay for authorized works.

(1) The governing authorities of municipalities shall have the power to establish, alter and change the channels of streams or other water courses, and to bridge the same, whenever so to do will promote the health, comfort and convenience of the inhabitants of such municipality.

(2) The governing authorities of any municipality shall also have the power and authority to incur costs and pay necessary expenses in providing labor, materials and supplies to clean or clear drainage ditches, creeks or channels, whether on public or private property, and to incur costs and pay necessary expenses in providing labor, materials and supplies in order to prevent erosion where such erosion has been caused or will be caused by such drainage ditches, creeks or channels. This paragraph shall not impose any obligation or duty upon the municipality and shall not create any additional rights for the benefit of any owner of public or private property.

(3) No additional taxes shall be imposed for the works authorized under subsections (1) and (2) of this section until the governing authorities shall adopt a resolution declaring its intention to levy the taxes and establishing the amount of the tax levies and the date on which the taxes initially will be levied and collected. This date shall be the first day of a month but not earlier than the first day of the second month from the date of adoption of the resolution. Notice of the proposed tax levies shall be published once each week for at least three (3) weeks in a newspaper having a general circulation in the municipality. The first publication of the notice shall be made not less than twenty-one (21) days before the date fixed in the resolution on which the governing authorities propose to levy the taxes, and the last publication of the notice shall be made not more than seven (7) days before that date. If, within the time of giving notice, fifteen percent (15%) or two thousand five hundred (2,500), whichever is less, of the qualified electors of the municipality file a written petition against the levy of the taxes, then the taxes shall not be levied unless authorized by three-fifths (3/5) of the qualified electors of the municipality voting at an election to be called and held for that purpose.

SOURCES: Codes, 1892, § 2936; 1906, § 3327; Hemingway's 1917, § 5824; 1930, § 2404; 1942, § 3374-122; Laws, 1900, ch. 122; Laws, 1950, ch. 491, § 122; Laws, 1990, ch. 308, § 1; Laws, 1999, ch. 510, § 2; Laws, 2001, ch. 567, § 1; Laws, 2004, ch. 344, § 1, eff from and after July 1, 2004.

Editor's Note — On August 2, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws, 1999, ch. 510, § 2.

Cross References — Exercise of eminent domain by municipalities, see § 21-37-47.

Organization of flood and drainage control districts, see §§ 51-35-301 et seq.

Counties and municipalities jointly building bridges, see §§ 65-21-23 et seq.

Creation of bridge commission in certain cases, see § 65-25-43.

JUDICIAL DECISIONS

1. In general.
2. Definitions.
3. Culverts.
4. Bridges.

1. In general.

Municipalities have no powers except those expressly given by the legislature. Mayor of Pascagoula v. Delmas, 108 Miss. 91, 66 So. 329 (1914).

2. Definitions.

Artificial channel serving principally in lieu of original channel for period of prescription becomes "water course." Scranton-Pascagoula Realty Co. v. City of Pascagoula, 157 Miss. 498, 128 So. 73 (1930).

Bayou with channel and well-defined banks was "water course" within statute requiring ratification by voters of alteration of channel by municipality. Scranton-Pascagoula Realty Co. v. City of Pascagoula, 157 Miss. 498, 128 So. 73 (1930).

3. Culverts.

City had right to construct culvert under undeveloped street without consent of dedicator and abutting landowners. Scranton-Pascagoula Realty Co. v. City of Pascagoula, 157 Miss. 498, 128 So. 73 (1930).

Construction of culvert to drain bayou alters channel within law relating to ratification by voters in such cases. Scranton-Pascagoula Realty Co. v. City of Pascagoula, 157 Miss. 498, 128 So. 73 (1930).

Municipality may use street for any purpose not inconsistent with use as highway, and rights are not limited to surface of street. Scranton-Pascagoula Realty Co. v. City of Pascagoula, 157 Miss. 498, 128 So. 73 (1930).

4. Bridges.

It is actionable negligence for a city to remove a bridge over a ditch in a densely populated district and provide and maintain for the passage of pedestrians over the same insecure planks, causing injuries to one wholly without fault or knowledge of the insecurity of the planks or bridge so provided by the city. Stainback v. Mayor of Meridian, 79 Miss. 447, 28 So. 947 (1900).

If the plaintiff, knowing the bridge was unsafe, ventures upon it without apparent necessity and is injured, he is guilty of contributory negligence and cannot recover. Stainback v. Mayor of Meridian, 79 Miss. 447, 28 So. 947 (1900).

Where planks were placed over a ditch in the streets for the convenience of the city laborers in transporting rocks across the ditch and barricades were erected to warn the public of the danger of crossing, a schoolgirl, who disregarded the barricades, went around them and suffered injury by the giving way of the planks while she was crossing on them has no cause of action against the city. Stainback v. Mayor of Meridian, 79 Miss. 447, 28 So. 947 (1900).

Recovery cannot be had for the injuries caused by the falling of a defective bridge unless it be shown that the defect was known to the authorities, or was so notorious that it was negligence not to know it; If the defect was concealed and not observable by ordinary care and attention, the municipality is not liable. Cohea v. Mayor of Coffeeville, 69 Miss. 561, 13 So. 668 (1891).

ATTORNEY GENERAL OPINIONS

Although municipalities may not generally provide drainage or flood control services for private individuals, they may perform work on private property for the purpose of controlling flooding on city streets, and, with the permission of the private property owner, they may perform drainage work on private property for the purpose of mitigating damage and unsafe conditions caused by the municipality in draining city streets. Fisher, Aug. 15, 1997, A.G. Op. #97-0423.

The governing authorities of a city may repair the spillway of a stream-fed lake owned by a nonprofit private corporation in the municipality if they determine on the minutes, consistent with fact, subject to a review by a court of competent jurisdiction, that the work will promote the health, comfort, and convenience of the inhabitants. Childers, August 7, 1998, A.G. Op. #98-0469.

A city had authority to incur expenses to perform work on a rainwater drainage problem along streets that adversely affected nearby property. Tyner, June 7, 2002, A.G. Op. #02-0233.

Governing authorities of city have the authority to perform work on the mayor's private property with his permission to repair a culvert and prevent blockage of an underground concrete drain. Hammack, Nov. 15, 2002, A.G. Op. #02-0639.

The governing authorities of a town have the authority to perform work on a natural water course on private property in order to alleviate erosion on private property; the authorities would have to find, consistent with fact, and spread upon the minutes, that the damage was caused by the way in which the public street was drained. Brown, Dec. 20, 2002, A.G. Op. #02-0721.

Pursuant to subsection (2) of this section, a city has authority to perform work within a subdivision to alleviate erosion. Baker, Mar. 28, 2003, A.G. Op. #03-0123.

A city may perform work on private property adjacent to the city right-of-way with the permission of the landowner to correct unsafe conditions, i.e., erosion or sinkholes, or flooding, which were directly caused by the way in which the municipality drained the city streets. Holmes-Hines, Aug. 22, 2003, A.G. Op. 03-0422.

The provision of subsection (1) of this section permitting municipal governing authorities to perform work on natural watercourses located not only on public property, but on private property as well, does not extend to private properties located outside the municipal corporate limits. Adams, July 30, 2004, A.G. Op. 04-0355.

Subsection (2) of this section gives municipal governing authorities the authority to perform work on drainage ditches, creeks or channels at municipal expense to prevent erosion and creates the duty to maintain its property in a safe manner. This authority and duty exists regardless of whether the property on which the drainage ditch, creek or channel is located is public or private, and whether the private property which was damaged by drainage from city property is located within the municipal corporate limits. Adams, July 30, 2004, A.G. Op. 04-0355.

A city has the authority to perform whatever measures it deems necessary to prevent erosion on a landowner's private property, however, this authority of the city does not rise to the level of a duty. Logan, Aug. 11, 2006, A.G. Op. 06-0327.

§ 21-19-15. Enacting police regulations.

(1) The governing authorities of municipalities shall have power to make all needful police regulations necessary for the preservation of good order and peace of the municipality and to prevent injury to, destruction of, or interference with public or private property.

(2) The governing authority of a municipality shall have the power to regulate or prohibit any mill, laundry or manufacturing plant from operating whereby the soot, cinders or smoke therefrom, or the unnecessary noises thereof, may do damage to or interfere with the use or occupation of public or private property.

(3) The governing authority of a municipality shall have the power to prohibit or regulate the sale or use of firecrackers, roman candles, torpedoes, sky rockets, and any and all explosives commonly known and referred to as fireworks; the term "fireworks" shall not include toy pistols, toy canes, toy guns, other devices in which paper caps manufactured in accordance with United States Interstate Commerce Commission regulations for packing and

shipping of toy paper caps are used, or toy pistol paper caps manufactured as provided herein, the sale and use of which shall be permitted at all times.

(4) The governing authority of a municipality may enact an ordinance specifying the manner and means by which a motor vehicle may be immobilized due to failure of the record title owner of the motor vehicle to pay traffic or parking fines totaling over Two Hundred Dollars ($200.00).

(5) The governing authority of a municipality may not enforce an ordinance regulating or restricting parking on any public street or roadway unless signage that adequately describes the parking regulation or restriction is posted within two hundred fifty (250) feet of the portion of the street or roadway where parking is regulated or restricted.

SOURCES: Codes, 1892, § 2938; 1906, § 3329; Hemingway's 1917, § 5826; 1930, § 2406; 1942, § 3374-124; Laws, 1926, ch. 274; Laws, 1950, chs. 517, 491, § 124; Laws, 1952, ch. 365, § 1; Laws, 2007, ch. 473, § 1, eff from and after July 1, 2007.

Cross References — Municipal authorities' power to employ and support a police force, see § 21-21-3.

Regulating manufacture, storage, sale, and possession of fireworks, see §§ 45-13-1 et seq.

Money from fines being used to suppress unlawful liquor and narcotics traffic, see § 99-27-37.

JUDICIAL DECISIONS

1. In general.
2. Regulating motor vehicles.
3. —Salesmen.
4. —Parades.
5. Restraining enforcement of void ordinance.
6. Under former law.

1. In general.

Circuit Court properly granted summary judgment in favor of a city because a lessee was not entitled to compensation where the city notified the lessee that it could no longer sell fireworks on newly annexed land, the regulation of fireworks sales was considered a police power, and the pre-existing-use doctrine and/or grandfathering was not applicable to ordinances relating to police powers, and the regulation of fireworks sales was considered a police power. Pearson's Fireworks, Inc. v. City of Hattiesburg, — So. 3d —, 2014 Miss. LEXIS 391 (Miss. Aug. 7, 2014).

A city ordinance which made it a criminal offense for any business to be open after 10 o'clock was invalid in the absence of showing that the ordinance was necessary for the preservation of good order and peace of municipality and to prevent destruction of public or private property. Goodin v. City of Philadelphia, 222 Miss. 77, 75 So. 2d 279 (1954).

A municipality cannot pass a criminal ordinance on a subject more severe or comprehensive than the state statute dealing with that subject. City of Amory v. Yielding, 203 Miss. 265, 34 So. 2d 726 (1948).

An ordinance allegedly enacted pursuant to this section [Code 1942, § 3374-124], making it unlawful for business places to keep open after 11 P.M., and prescribing a penalty for its violation, as applied to a grocery store, constituted a deprivation of the property right of the owner without due process of law and an unreasonable restraint of trade not per se or per accidens a nuisance. Town of McCool v. Blaine, 194 Miss. 221, 11 So. 2d 801 (1943).

An instance where an affidavit under an ordinance charged no offense thereunder and on appeal in the circuit court the affidavit was allowed to be amended. City of Pascagoula v. Seymour, 136 Miss. 502, 101 So. 576 (1924).

A city has power to pass an ordinance making any act amounting to a misdemeanor under the state laws an offense against the municipality. Richards v. Town of Magnolia, 100 Miss. 249, 56 So. 386 (1911).

An ordinance may provide that all offenses which are misdemeanors against the state shall constitute offenses against a municipality when committed within its limits, and such ordinance incorporates into the ordinances of the municipality all state laws relative to misdemeanors. Smothers v. City of Jackson, 92 Miss. 327, 45 So. 982 (1908).

A municipality cannot as a police regulation impose taxes on junk stores. Taxation is not within the police power. Pitts v. City of Vicksburg, 72 Miss. 181, 16 So. 418 (1894).

2. Regulating motor vehicles.

This section [Code 1942, § 3374-124] does not authorize a municipality to establish an automobile testing station and engage in the business of testing automobiles, and consequently a municipality had no authority to contract for the purchase of equipment for such purpose. Davenport v. Blackmur, 184 Miss. 836, 186 So. 321 (1939).

For the purpose of prohibiting incapacitated and incompetent and reckless persons from driving motor vehicles upon the streets in disregard to the public safety, a municipality has a right to regulate such matters by ordinance. Wasson v. City of Greenville, 123 Miss. 642, 86 So. 450 (1920).

3. —Salesmen.

Where a city passed an ordinance making it unlawful for transient vendors to go in and upon private residences, and in and upon private property and buildings other than residences, without first having been requested or invited to do so by the owner or occupant, for the purpose of soliciting orders for the sale of goods or selling the same, the ordinance was valid as it applied to soliciting in private residences but was invalid as to property and buildings other than residences, which includes primarily business offices and stores. Day v. Klein, 225 Miss. 191, 82 So. 2d 831 (1955).

However, a municipality has no authority to require by ordinance a solicitor going from house to house selling or taking orders for goods for future delivery or services to be performed in the future, etc., to give bond conditioned that he will make delivery or perform the services according to contract. City of Kosciusko v. No Equal Textile Co., 139 Miss. 220, 104 So. 102 (1925).

4. —Parades.

An ordinance which confers upon the chief of police of a city unrestricted discretion as to who shall or shall not parade or march on the sidewalks or streets of the city, with no standards as to time, place of marching, or any other feature is null and void. King v. City of Clarksdale, 186 So. 2d 228 (Miss. 1966).

5. Restraining enforcement of void ordinance.

An injunction will lie against the enforcement of a void ordinance where it is about to be enforced. Fitzhugh v. City of Jackson, 132 Miss. 585, 97 So. 190, 33 A.L.R. 279 (1923).

6. Under former law.

Ordinance prohibiting sale, possession, or control of fireworks within city limits is invalid as unreasonable, since possession and sale of fireworks is regarded as lawful in the state and the subject of privilege tax, and as not authorized by any state statute making the offense described therein a misdemeanor against the state. King v. City of Louisville, 207 Miss. 612, 42 So. 2d 813 (1949).

A municipality is not liable for torts of officers and agents in attempt to enforce ordinances and other regulations adopted under police powers. Bradley v. City of Jackson, 153 Miss. 136, 119 So. 811 (1928).

An ordinance making the storage or keeping for sale of intoxicating liquors an offense against the municipality was valid. Hurley v. City of Corinth, 97 Miss. 396, 52 So. 695 (1910).

ATTORNEY GENERAL OPINIONS

Miss. Code Section 21-19-15 authorizes municipalities to enact regulations to prevent destruction of public property; in addition, Miss. Code Section 21-17-5 gives municipalities responsibility for care, management and control of municipal property; therefore, municipality may, by ordinance, impose weight limit on trucks being driven on municipal streets. Clark, June 9, 1993, A.G. Op. #93-0348.

A municipal police department has concurrent jurisdiction with state security personnel over criminal over criminal activity that occurs on state-owned property located within the municipal boundaries, but since there is no authority which gives primary jurisdiction to one agency over another, a cooperative effort should be made on the part of all agencies with jurisdiction to evaluate each occurrence of criminal activity on an individual basis and make a decision as to who should have primary jurisdiction based on the circumstances of the incident and the resources of each investigating agency. Prichard, January 16, 1998, A.G. Op. #98-0009.

A developer or a homeowner's association may install a security gate on a public street at the entrance to a subdivision and the governing authorities may in their sole discretion close the street during certain periods of the day after proper findings of fact. Ward, April 17, 1998, A.G. Op. #98-0206.

A municipality may enforce an ordinance prohibiting the sale and possession of fireworks in a recently annexed area and may prohibit the sale of fireworks by businesses which sold fireworks before the area was annexed. Davis, April 24, 1998, A.G. Op. #98-0224.

While a municipality has the power to make all needful police regulations, this power does not authorize a municipality to regulate the activities of private investigators beyond the scope of present state statutes regulating the possession of firearms. Malta, July 2, 1999, A.G. Op. #99-0269.

A municipality has no authority to require, as a condition of the issuance of a building permit and in nonemergency situations, that a performance bond be posted to ensure completion of a purely private project. Mitchell, March 3, 2000, A.G. Op. #2000-0083.

A municipality may impose weight limits on streets and issue tickets for violations; however, such limitations may not effective solely upon vehicles associated with the oil industry — they must be uniformly applicable to all vehicles exceeding the determined weight limit. Thach, Apr. 23, 2001, A.G. Op. #01-0221.

A municipality has the power to enact a noise ordinance, which prescribes the acceptable levels of noise which may be produced by residents, businesses, and industries; any such ordinance must be uniformly applied and is applicable only to businesses located within the municipal boundaries. Thach, Apr. 23, 2001, A.G. Op. #01-0221.

Fire departments have the power to verify that all reports of fires are handled appropriately and that the validity or invalidity of all reports of fires are verified. Miller, May 31, 2002, A.G. Op. #02-0280.

A municipality has authority to set weight limits of vehicles passing over municipal streets, and any driver operating a vehicle in contravention of any weight limit shall be liable for all damage which the highway or street may sustain as a result of that operation; further, municipal governing authorities may seek damages in a civil action. Richardson, May 16, 2003, A.G. Op. 03-0229.

Municipalities may, with the owner's consent, make and enforce fire lanes on private property. Gurley, Feb. 13, 2004, A.G. Op. 04-0059.

September 14, 1995 opinion to Hon. Jerry L. Mills and June 6, 2002 opinion to Mr. John Hedglin, pertaining to closing of public streets temporarily for public purposes, reaffirmed and clarified. Mills, May 13, 2005, A.G. Op. 05-0212.

Governing authorities may allow gates, cameras, speed bumps or other similar devices on public municipal streets as long as such streets remain fully and equally accessible to all members of the general public. Mills, Apr. 28, 2006, A.G. Op. 06-0053.

RESEARCH REFERENCES

ALR. Validity of municipal regulation of solicitation of magazine subscriptions. 9 A.L.R.2d 728.

Maintenance or regulation by public authorities of tourist or trailer camps, motor courts, or motels. 22 A.L.R.2d 774.

Validity of regulations as to plumbers and plumbing. 22 A.L.R.2d 816.

Validity of municipal ordinance prohibiting house to house soliciting and peddling without invitation. 35 A.L.R.2d 355.

Public dances or dance halls as nuisances. 44 A.L.R.2d 1381.

Regulation of junk dealers. 45 A.L.R.2d 1391.

Validity of regulation of smoke and other air pollution. 78 A.L.R.2d 1305.

Validity and construction of statute or ordinances forbidding treatment in health clubs or massage salons by persons of the opposite sex. 51 A.L.R.3d 936.

Application of city ordinance requiring license for a laundry, to supplier of coin-operated laundry machines intended for use in apartment building. 65 A.L.R.3d 1296.

Validity, construction, and application of state or local laws regulating the sale, possession, use, or transport of fireworks. 48 A.L.R.5th 659.

§ 21-19-17. Restricting movements of individuals where public safety is endangered.

The governing authorities of municipalities shall have the power to make regulations to protect property, health and lives and to enhance the general welfare of the community by restricting the movements of the citizens, or any group thereof, of such municipalities when there is eminent danger to the public safety because of freedom of movement thereof.

SOURCES: Codes, 1892, § 2950; 1906, § 3341; Hemingway's 1917, § 5838; 1930, § 2417; 1942 § 3374-132; Laws, 1950, ch. 491, § 132; Laws, 1964, ch. 496, §§ 1-4, eff from and after passage (approved March 11, 1964).

Cross References — Reciprocal law enforcement between municipalities during civil emergencies, see §§ 21-21-31 et seq.

Governor's ordering into active state service organized and unorganized militia, see §§ 33-5-9, 33-7-301.

Notifying governor when local resources inadequate to cope with emergency, see § 33-7-301.

Creating boards of health and passing sanitary laws, see § 41-3-57.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

In determining validity of ordinance enacted under statute authorizing municipality to make regulations to secure general health, and prevent spread of contagious diseases, court will not consider wisdom of ordinance but merely whether it constitutes reasonable exercise of power granted. Hartman v. May, 168 Miss. 477, 151 So. 737, 93 A.L.R. 1408 (1934).

Ordinance requiring children's vaccination against smallpox as condition to their admission to public schools held valid as reasonable exercise of power to make regulations to prevent introduction and spread of contagious diseases, though no smallpox epidemic existed. Hartman v. May, 168 Miss. 477, 151 So. 737, 93 A.L.R. 1408 (1934).

Much must be left to municipal authorities' discretion in exercising granted authority to make regulations to secure general health and to prevent introduction of contagious diseases and presumption favors reasonableness of such regulations. Hartman v. May, 168 Miss. 477, 151 So. 737, 93 A.L.R. 1408 (1934).

Ordinance forbidding barber shops to open before 7:30 a.m. or remain open after 6:30 p.m. could not be held valid on ground it was designed to fix reasonable time for inspecting barber shops. Knight v. Johns, 161 Miss. 519, 137 So. 509 (1931).

The court itself should construe a municipal ordinance and not submit it to a jury for construction. Town of Pass Christian v. Washington, 81 Miss. 470, 34 So. 225 (1903).

An ordinance appointing a physician health officer of a municipality and directing him to take "the necessary sanitary precautions for the general good and health of the town," is not a contract binding the municipality to pay the physician for professional services rendered patients. Town of Pass Christian v. Washington, 81 Miss. 470, 34 So. 225 (1903).

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. Pl & Pr Forms (Rev), Municipal, etc. Tort Liability, Form 71 (complaint, damages and loss of personal property caused by riot).

CJS. 101A Zoning & Land Planning §§ 8, 57.

§ 21-19-19. Regulating blind-tigers and disreputable places and practices.

The governing authority of any municipality shall have the power to restrain, prohibit and suppress blind-tigers, bucket-shops, slaughterhouses, houses of prostitution, disreputable houses, hotels and motels renting rooms on an hourly basis, games and gambling houses and rooms, dance houses and rooms, keno rooms, and all kinds of indecency and other disorderly practices, and disturbance of the peace, and to provide for the punishment of the persons engaged therein.

SOURCES: Codes, 1892, § 2951; 1906, § 3342; Hemingway's 1917, § 5839; 1930, § 2418; 1942, § 3374-133; Laws, 1950, ch. 491, § 133; Laws, 1986, ch. 302, § 2; Laws, 2005, ch. 416, § 1, eff from and after July 1, 2005.

Cross References — Definition of "bucket shops" and their prohibition, see § 87-1-21.

Actions to abate and enjoin nuisances, see §§ 95-3-1 et seq.

Prostitution and related acts being crimes, see §§ 97-29-49 et seq.

Prohibiting wagering on all manner of games, amusements, elections and other events, see §§ 97-33-1 et seq.

Money from fines being used to suppress unlawful liquor and narcotics traffic, see § 99-27-37.

JUDICIAL DECISIONS

1. In general.

An injunction against violation of this provision may be obtained against a persistent violator. Walton v. City of Tupelo, 241 Miss. 894, 133 So. 2d 531 (1961).

Chancery courts are given, by clear inference, jurisdiction to enjoin violations. Walton v. City of Tupelo, 241 Miss. 894, 133 So. 2d 531 (1961).

This provision is self-executing, not requiring adoption by ordinance. Walton v. City of Tupelo, 241 Miss. 894, 133 So. 2d 531 (1961).

This section [Code 1942, § 3374-133] operates to create an exception to the rule that equity will not enjoin the commission or repetition of crime. City of Tupelo v. Walton, 237 Miss. 892, 116 So. 2d 808, 76 A.L.R.2d 870 (1960).

RESEARCH REFERENCES

ALR. Modern concept of obscenity. 5 A.L.R.3d 1158.

Comment Note.—Validity of procedure designed to protect the public against obscenity. 5 A.L.R.3d 1214.

Vagueness as invalidating statutes or ordinances dealing with disorderly persons or conduct. 12 A.L.R.3d 1448.

Construction and application of state or municipal enactments relating to policy or numbers games. 70 A.L.R.3d 897.

Validity, construction, and effect of statutes or ordinances prohibiting the sale of obscene materials to minors. 93 A.L.R.3d 297.

Am Jur. 12 Am. Jur. Pl and Pr Forms (Rev), Gambling, Form 8 (gambling house, abating as nuisance and enjoining further activities).

18A Am. Jur. Pl & Pr Forms (Rev), Nuisances, Form 1 (complaint, petition, or declaration for equitable relief from nuisance and for damages).

10 Am. Jur. Trials, Obscenity Litigation, Preliminary Matters and Constitutional Questions.

CJS. 101A Zoning & Land Planning §§ 8, 57.

§ 21-19-20. Proceedings to demolish or seize abandoned houses or buildings used for sale or use of drugs or constituting public hazard or nuisance; authority to sell, transfer, convey or use abandoned houses or buildings for suitable municipal purposes.

(1)(a) A municipality shall institute proceedings to have demolished or seized an abandoned house or building that is used for the sale or use of drugs. In addition, the governing authorities of a municipality may sell, transfer or otherwise convey or use an abandoned house or building for suitable municipal purposes. The local law enforcement authority of the municipality shall have documented proof of drug sales or use in the abandoned property before a municipality may initiate proceedings to have the property demolished or seized.

(b)(i) A municipality shall institute proceedings under this section to have an abandoned house or building demolished or seized if the governing authority of the municipality determines that the house or building is a menace to the public health and safety of the community and that it constitutes a public hazard and nuisance.

(ii) Upon the receipt of a petition requesting the municipality to demolish or seize an abandoned house or building that constitutes a public hazard and nuisance signed by a majority of the residents residing within four hundred (400) feet of the property, the governing authority of the municipality shall notify the property owner that the petition has been filed and that a date for a hearing on the petition has been set. Notice to the property owner shall be by United States mail, or if the property owner or the owner's address is unknown, publication of the notice shall be made twice each week during two (2) successive weeks in a public newspaper of the county in which the municipality is located; where there is no newspaper in the county, the notice shall be published in a newspaper having a general circulation in the state. The hearing shall be held not less than thirty (30) nor more than sixty (60) days after service or completion of publication of the notice. At the hearing, the governing authority shall determine whether the property is a menace to the public health and safety of the community which constitutes a public hazard and nuisance. If the governing authority determines that the property is a public hazard and nuisance, the municipality shall institute proceedings under subsection (2) of this section to demolish or seize the abandoned house or building.

(2) The municipality shall file a petition to declare the abandoned property a public hazard and nuisance and to have the property demolished or seized with the circuit clerk of the county in which the property or some part of the property is located. All of the owners of the property involved, and any mortgagee, trustee, or other person having any interest in or lien on the property shall be made defendants to the proceedings. The circuit clerk shall present the petition to the circuit judge who, by written order directed to the circuit clerk, shall fix the time and place for the hearing of the matter in termtime or vacation. The time of the hearing shall be fixed on a date to allow sufficient time for each defendant named to be served with process, as otherwise provided by law, not less than thirty (30) days before the hearing. If a defendant or other party in interest is not served for the specified time before the date fixed, the hearing shall be continued to a day certain to allow the thirty-day period specified.

(3) Any cost incurred by a municipality under this section for demolishing or seizing abandoned property shall be paid by the owners of the property.

SOURCES: Laws, 1995, ch. 343, § 1; Laws, 2005, ch. 427, § 2; Laws, 2008, ch. 521, § 1, eff from and after July 1, 2008.

Cross References — Cleaning private property, see § 21-19-11.

ATTORNEY GENERAL OPINIONS

The procedures of this section cannot be used if a structure has not been used in the sale or use of illegal drugs. Huggins, Mar. 28, 2003, A.G. Op. #03-0141.

§ 21-19-21. Enacting fire regulations.

The governing authorities of municipalities shall have the power to establish fire limits, and to regulate, restrain, or prohibit the erection of buildings made of sheet iron, wood, or any combustible material, within such limits as may be prescribed by ordinance, and to provide for the removal of the same at the expense of the owner thereof when erected contrary to the ordinances of the municipality. Such authorities shall have the power to regulate and prevent the storing of green hides and the carrying on of manufactures dangerous in causing or producing fires, injurious to health, or obnoxious or offensive to the inhabitants. Such authorities shall have the power to regulate the storage of powder, pitch, turpentine, resin, hemp, hay, cotton, and all other combustible and inflammable materials, and the storage of lumber in yards or on lots within the fire limits or as may be prescribed by ordinance. Such authorities shall have the power to regulate the use of lights and candles in stables, shops, and other places. Such authorities shall have the power to remove or prevent the construction of any fireplace, chimney, stove, oven, boiler, kettle, or any apparatus used in any house, building, manufactory, or business which may be dangerous in causing or producing fires. Such authorities shall have the power to direct the safe construction of deposits for ashes. Such authorities shall have the power to enter into and examine all dwelling houses, lots, yards, inclosures, and buildings of every description as well as other places, in order to ascertain whether any of them are in a dangerous state. Such authorities shall have the power to take down and remove buildings, walls, and superstructures that may become insecure or dangerous, and to require the owner of insecure or dangerous buildings, walls, and other erections to remove or render the same secure and safe at the cost of the owner of such property. Such authorities shall have the power to regulate and prescribe the manner and order the building of party, parapet, and fire-walls and party-fences, and to regulate and prescribe the construction and building of chimneys, smokestacks, and smoke and hot-air flues.

SOURCES: Codes, 1892, §§ 2967, 2968, 2969; 1906, §§ 3352, 3363, 3364; Hemingway's 1917, §§ 5849, 5860, 5861; 1930, §§ 2428, 2440, 2441; 1942, §§ 3374-140, 3374-149, 3374-150; Laws, 1938, ch. 331; Laws, 1950, ch. 491, §§ 140, 149, 150, eff from and after July 1, 1950.

Cross References — Municipal authorities' power to appoint fire marshal, see § 21-25-1.

Creation of fire districts and related matters, see §§ 21-25-21, 21-25-23.

Investigations of fires by state fire marshal at request of local official or any party in interest, see § 45-11-1.

Correcting dangerous or hazardous inflammable conditions in buildings, see § 45-11-3.

State fire academy as agency to conduct and coordinate training of firefighters in state, see § 45-11-7.

Safety measures in case of fire in public buildings, see §§ 45-11-21 et seq.

Prohibitions against following fire apparatus and crossing fire hose, see §§ 63-3-621, 63-3-1209.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

Power conferred upon municipalities to adopt building codes and related regulations includes power to regulate, restrain or prohibit the erection of buildings made of certain types of materials, within limits prescribed. Berry v. Embrey, 238 Miss. 819, 120 So. 2d 165 (1960).

Billboards with sheet iron surface held not building within law authorizing municipality to prohibit erection of certain "buildings" within prescribed limits. Town of Union v. Ziller, 151 Miss. 467, 118 So. 293, 60 A.L.R. 1155 (1928).

2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

Municipal ordinance prohibiting sale, possession, or control of fireworks within the city limits held unauthorized under this section. King v. City of Louisville, 207 Miss. 612, 42 So. 2d 813 (1949).

Municipal corporation is not responsible for destruction of property within its limits by fire which it did not set out, merely because, through negligence or other default of corporation or its employees, members of fire department failed to extinguish fire, though this failure is due to negligence in permitting fire hydrants to become defective; and it makes no difference that municipality uses same reservoirs and pipes for its fire service that it employs for distribution of public supply for domestic purposes, from which it derives profit, since the two functions are distinguishable. City of Columbus v. McIlwain, 205 Miss. 473, 38 So. 2d 921 (1949).

Laws of 1944, Chap. 208 (Code 1942, §§ 3825-01 to 3825-17), did not withdraw from municipalities any of the powers conferred by this section, but, where a fireman's position has been abolished, determine only his rights. City of Laurel v. Reddoch, 200 Miss. 259, 26 So. 2d 465 (1946).

It was error to grant the remedy of mandamus against the mayor and board of aldermen of a municipality to compel them to enforce a fire prevention ordinance enacted under this section, where the ordinance was wholly incomplete with respect to the means of enforcement of its provisions. Garraway v. State ex rel. Dale, 184 Miss. 466, 184 So. 628 (1938).

ATTORNEY GENERAL OPINIONS

A municipality, after first finding what remains of the building is dangerous and insecure as a result of fire damage, enter upon the property and demolish the same and remove the debris therefrom. Baker, Nov. 21, 2003, A.G. Op. 03-0615.

In the exercise of its powers under this section, a municipality is not specifically required to utilize the same procedures for notice and hearing set forth in § 21-19-11. The municipality may enact its own provisions with regard to notice to property owners. Baker, Nov. 21, 2003, A.G. Op. 03-0615.

A municipality is not limited to the $10,000.00 amount found in § 21-19-11 for the cleaning of property pursuant to that section. There is no limitation on the amount which may be expended to "take down and remove buildings, walls, and superstructures." Baker, Nov. 21, 2003, A.G. Op. 03-0615.

A municipality may not assess the cost of removal as a lien against the property; however, nothing would prevent a municipality from pursuing a civil action against the property owner for recovery of the actual expenses of the removal of the structure should it become necessary for it to do so. Baker, Nov. 21, 2003, A.G. Op. 03-0615.

RESEARCH REFERENCES

ALR. Validity of regulation of smoke and other air pollution. 78 A.L.R.2d 1305.

Validity and construction of statute or ordinance providing for repair or destruction of residential building by public authorities at owner's expense. 43 A.L.R.3d 916.

Validity, construction, and application of state or local laws regulating the sale, possession, use, or transport of fireworks. 48 A.L.R.5th 659.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 435-437.

8 Am. Jur. Legal Forms 2d, Fires, §§ 117:13, 117:14 (contract for installation, maintenance, and operation of fire detection and alarm system).

1B Am. Jur. Pl & Pr Forms (Rev), Amusements and Exhibitions, Form 32 (complaint, petition, or declaration to enjoin threatened closing of theater as fire hazard).

5 Am. Jur. Pl & Pr Forms (Rev), Buildings, Forms 11 et seq. (petition or application, for order to show cause, why fire hazard should not be abated).

CJS. 101 A Zoning & Land Planning §§ 8, 57.

§ 21-19-23. Entering mutual assistance pacts with other municipalities.

The governing authorities of municipalities may enter into mutual assistance pacts or agreements with other municipalities in the assignment of personnel, equipment, supplies and material for the purposes of combatting fires and natural and enemy disasters, and of preventing and alleviating riots or civil disturbances of the peace and tranquility within such municipalities. This section shall be liberally construed to effect the purposes thereof.

SOURCES: Codes, 1942, § 3470; Laws, 1942, ch. 227; Laws, 1958, ch. 510; Laws, 1964, ch. 502, eff from and after passage (approved Feb. 25, 1964).

Cross References — Reciprocal law enforcement between municipalities during civil emergencies, see §§ 21-21-31 et seq.

Fire departments being authorized to go outside municipal limits, see § 21-25-5.

Organization of flood and drainage control districts, see §§ 51-35-301 et seq.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 542.

§ 21-19-25. Adoption, amendment and revision of building and other codes.

Any municipality within the State of Mississippi may, in the discretion of its governing authority, adopt building codes, plumbing codes, electrical codes, gas codes, sanitary codes, or any other codes dealing with general public health, safety or welfare, or a combination of the same, by ordinance, in the manner prescribed in this section. Before any such code shall be adopted, it shall be either printed or typewritten, and it shall be presented in pamphlet form to the governing authority of the municipality at a regular meeting. The ordinance adopting the code shall not set out the code in full, but shall merely identify the same. The vote on passage of the ordinance shall be the same as on any other ordinances. After its adoption, the code shall be certified to by the mayor and clerk of the municipality, and shall be filed as a permanent record in the office of the clerk, who shall not be required to transcribe and record the same in the ordinance book as other ordinances. It shall not be necessary that the ordinance adopting the code or the code itself be published in full, but notice of the adoption of the code shall be given by publication in some newspaper of the municipality for one (1) time, or if there be no such newspaper, by posting at three (3) or more public places within the corporate limits, a notice in substantially the following form:

> Notice is given that the city (or town or village) of ____________, on the (give date of ordinance adopting code), adopted (state type of code and other information serving to identify the same) code.

If the governing authority of any municipality adopts or has adopted construction codes which do not have proper provisions to maintain up-to-date amendments, specifications in such codes for cements used in portland cement concrete shall be superseded by nationally recognized specifications referenced in any code adopted by the Mississippi Building Code Council.

All the provisions of this section shall apply to amendments and revisions of the code mentioned in this section. Any code adopted in accordance with this section shall not be in force for one (1) month after its passage, unless the municipal authorities in the ordinance authorize to the contrary. The provisions of this section shall be in addition and supplemental to any existing laws authorizing the adoption, amendment or revision of municipal ordinances or codes.

Notwithstanding any provision of this section to the contrary, any code adopted by a municipality before or after April 12, 2001, is subject to the provisions of Section 41-26-14(10).

Notwithstanding any provision of this section to the contrary, the governing authorities of each municipality in Jackson, Harrison, Hancock, Stone and Pearl River Counties shall enforce the requirements imposed under Section 17-2-1 as provided in such section.

The provisions of this section shall apply to all municipalities of this state, whether operating under the code charter, a special charter, commission form, or other form of government.

SOURCES: Codes, 1942, §§ 3374-80, 3374-81; Laws, 1946, ch. 438; Laws, 1950, ch. 491, §§ 80, 81; Laws, 2001, ch. 587, § 3; Laws, 2006, ch. 541, § 7; Laws, 2008, ch. 379, § 2, eff from and after passage (approved Mar. 31, 2008.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in the fifth paragraph of this section. The words "before or after the effective date of House Bill No. 962, 2001 Regular Session" were changed to "before or after April 12, 2001." The Joint Committee ratified the correction at its May 16, 2002 meeting.

JUDICIAL DECISIONS

1. In general.

Municipal ordinance requiring installation of smoke detectors in apartment buildings could not be collaterally attacked, for failure of municipality to comply with provisions of § 21-19-25 in enacting ordinance, by landlords in action against them for deaths of 2 tenants in fire in apartments not equipped with smoke detectors. Hill v. London, Stetelman, & Kirkwood, Inc., 906 F.2d 204 (5th Cir. 1990).

The authority given by Code 1972 § 21-19-25 to municipalities for the adoption of building codes does not go so far as to authorize municipalities to require the State Building Commission to submit plans and specifications for the construction of buildings or pay fees to municipalities for building permits; the grant of specific power to the Commission under Code 1972 § 31-11-3 to construct state buildings supersedes municipal building codes. City of Jackson v. Mississippi State Bldg. Comm'n, 350 So. 2d 63 (Miss. 1977).

A municipality is authorized to raze and remove an unsafe and unfit building at the expense of the property owner when he has failed and refused, after reasonable notice provided for in an ordinance adopting the building code, to either repair his building or remove it and clear his land. Bond v. City of Moss Point, 240 So. 2d 270 (Miss. 1970).

This section [Code 1942, § 3374-80] gives municipalities discretionary power to adopt building codes and related regulations. Berry v. Embrey, 238 Miss. 819, 120 So. 2d 165 (1960).

ATTORNEY GENERAL OPINIONS

Municipalities are authorized to adopt building codes and related regulations and to charge fees for building permits incident thereto. Jenkins, July 10, 1991, A.G. Op. #91-0454.

A person employed by the Department of Corrections may continue to serve in elected office as a city alderman as long as he waives all salary and compensation for office and elects to receive a retirement allowance in lieu thereof; such a person may also continue to serve as a city alderman, retire from the Department of Corrections, and begin to receive a retirement allowance without the required forty-five day separation period as long as he elects and waives as required. Touchton, January 20, 1998, A.G. Op. #97-0753.

A municipality may adopt as its own the provisions of the Southern Building Code and may charge fees for building permits incident thereto; a city is responsible for enforcement of any codes so adopted, but, if no such code is adopted, then no enforcement power flows to the city. Brogdon, Jan. 21, 2000, A.G. Op. #99-0716.

A municipality may adopt an electrical and/or plumbing code which includes a provision that persons engaging in such business obtain a municipal license to engage in such business and may provide for inspection by the city, for compliance with the municipal code; a person performing electrical and/or plumbing work on his or her own home may not be required to obtain a license, but such work would be subject to inspection for compliance with the code by a county or municipality, if the county or municipality has a code so providing. Cameron, Apr. 23, 2001, A.G. Op. #01-0190.

There is no requirement that the governing authorities first conduct a public hearing before they adopt or amend the building codes of a municipality. Jones, Mar. 1, 2002, A.G. Op. #02-0081.

Municipalities pursuant to this section may require building permits and inspections for any construction projects undertaken within the corporate limits; however, a municipality may not require contractors seeking to do building or construction work in the municipality to have a certificate of responsibility or license from the State Board of Contractors under §§ 31-3-1 et seq. or 73-59-1 et seq. as a prerequisite to obtaining a building permit. Clark, Oct. 11, 2002, A.G. Op. #02-0574.

Under Miss. Code Ann. § 21-19-25, a municipality may require proof of general liability insurance and workers' compensation coverage when required by Miss. Code Ann. § 71-3-1 et seq., as conditions for the issuance of a municipal building permit. Hedglin, March 23, 2007, A.G. Op. #07-00133, 2007 Miss. AG LEXIS 119.

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

Am Jur. 13A Am. Jur. Legal Forms 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 180:72 (ordinance regulating fire preventive construction of nursing and convalescent homes).

5 Am. Jur. Pl & Pr Forms (Rev), Buildings, Form 4 (petition or application, for writ of mandamus, to compel issuance of building permit).

CJS. 39A C.J.S., Health and Environment §§ 33-39.

101 A Zoning & Land Planning §§ 8, 57.

§ 21-19-27. Compelling erection of barriers.

The governing authorities of municipalities shall have the power to compel owners of property adjacent to walks and ways to erect and maintain railings, safeguards, and barriers along the same in all cases where construction, repair, or other building activities on such premises create a dangerous or hazardous condition, and in all other cases where danger or hazard is created by the act of the property owner.

SOURCES: Codes, 1892, § 2929; 1906, § 3320; Hemingway's 1917, § 5817; 1930, § 2397; 1942, § 3374-117; Laws, 1950, ch. 491, § 117, eff from and after July 1, 1950.

RESEARCH REFERENCES

CJS. 101 A Zoning & Land Planning §§ 8, 57.

§ 21-19-29. Regulating ingress and egress of buildings.

The governing authorities of municipalities shall have the power to regulate the entrances to public halls, churches, and buildings, and the way of ingress and egress to and from the same.

SOURCES: Codes 1892, § 2966; 1906, § 3362; Hemingway's 1917, § 5859; 1930, § 2439; 1942, § 3374-148; Laws, 1950, ch. 491, § 148, eff from and after July 1, 1950.

Cross References — Fire safety measures in public buildings, see §§ 45-11-21 et seq.

JUDICIAL DECISIONS

1. In general.

Power conferred upon municipalities to adopt building codes and related regulations includes power to regulate, restrain or prohibit the erection of buildings made of certain types of materials, within limits prescribed. Berry v. Embrey, 238 Miss. 819, 120 So. 2d 165 (1960).

RESEARCH REFERENCES

CJS. 39A C.J.S., Health and Environment §§ 34, 36-39.

§ 21-19-31. Regulation of public places, depots and common carriers.

The governing authorities of municipalities shall have the power to regulate parks, public grounds, depots, depot grounds, and places for storage of freight and goods within the corporate limits. Said authorities shall have the power to compel railroads and other common carriers of passengers to furnish and maintain sanitary water toilets, where the municipality has a waterworks system, the facilities of which are available to said railroad or other common carrier, and in other cases to have a sanitary toilet, in their depots or stations. Said authorities shall have the power to provide for and regulate the construction and passage of railways and street railroads through the streets, avenues, alleys, lanes, and public grounds of the municipality.

SOURCES: Codes, 1892, § 2931; 1906, § 3322; Hemingway's 1917, § 5819; 1930, § 2399; 1942, § 3374-118; Laws, 1950, ch. 491, § 118, eff from and after July 1, 1950.

Cross References — Limitations on municipality's granting franchise, see § 21-27-1.

Public utilities' erecting posts and wires and laying pipes, conduits and pipelines, see §§ 21-27-3, 21-27-5.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

That another company had laid pipe line over same territory did not prevent respondent from condemning land for pipe line, public policy of State, as evidenced by anti-trust statutes and statutes prohibiting municipalities from granting exclusive franchise, being to encourage competition. Gandy v. Public Serv. Corp., 163 Miss. 187, 140 So. 687 (1932).

A street railway company which has permission from a city to lay its tracks in the streets has authority to cross the tracks of a railroad company in the street without instituting condemnation proceedings and paying damages. Mississippi Cent. R.R. v. Hattiesburg Traction Co., 109 Miss. 101, 67 So. 897 (1915).

The municipal authorities to whom land has been donated for public use as an ornamental park exclusively may be restrained by injunction from subverting the object of the donation. Rowzee v. Pierce, 75 Miss. 846, 23 So. 307, 65 Am. St. R. 625 (1898).

Upon abandonment by a town of the public purpose of a donation of land, the property reverts to the original donor. Rowzee v. Pierce, 75 Miss. 846, 23 So. 307, 65 Am. St. R. 625 (1898).

Under a devise for "a public park," a municipal corporation may take and hold land convenient and accessible therefor although it lies without the corporate limits and the charter confers no express authority to own lands outside. Lester v. Mayor of Jackson, 69 Miss. 887, 11 So. 114 (1892).

RESEARCH REFERENCES

ALR. Liability of local government entity for injury resulting from use of outdoor playground equipment at municipally owned park or recreation area. 73 A.L.R.4th 496.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 453-455.

8A Am. Jur. Legal Forms 2d, Franchises from Public Entities §§ 124:81 et seq. (right to operate street railway; conditions, restrictions, etc).

CJS. 101 A Zoning & Land Planning §§ 8, 57.

§ 21-19-33. Regulations of circuses, shows, theaters, and other amusements.

The governing authorities of municipalities shall have the power to adopt reasonable ordinances for the regulation of circuses, shows, theaters, bowling alleys, concerts, theatrical exhibitions, skating rinks, pistol or shooting galleries, amusement parks and devices, and other similar things. Said authorities shall have the power and authority to regulate, prohibit, or suppress billiard tables, poolrooms, fortune-tellers, cane or knife racks, and slot machines and other gambling devices within the corporate limits. However, such governing authorities shall not be authorized to regulate, prohibit or suppress any gambling device, machine or equipment that is owned, possessed, controlled, installed, procured, repaired or transported within the corporate limits in accordance with subsection (4) of Section 97-33-7 or Section 75-76-34. In addition, such governing authorities shall not be authorized to regulate, prohibit or suppress the ownership and display of antique coin machines as defined in Section 27-27-12.

SOURCES: Codes, 1892, § 2949; 1906, § 3340; Hemingway's 1917, § 5837; 1930, § 2416; 1942, § 3374-131; Laws, 1910, ch. 200; Laws, 1922, ch. 124; Laws, 1950, ch. 491, § 131; Laws, 1960, ch. 426; Laws, 1990, ch. 573, § 1; Laws, 1991, ch. 543, § 3; Laws, 1992, ch. 371, § 2, eff from and after July 1, 1992.

Cross References — Elected or appointed official not to derive any pecuniary benefit as result of duties under this section, and penalties therefor, see § 25-4-119.

Limitation of municipalities' powers concerning local privilege taxes, see § 27-17-5.

Regulating manufacture, storage, sale and possession of fireworks, see §§ 45-13-1 et seq.

Secretary of state's being agent of out-of-state carnival, fair, etc., for service of process, see §§ 75-75-1 et seq.

Regulation of schools and training institutions that teach or train gaming employees, see § 75-76-34.

Minors not being allowed in pool or billiard halls, see § 97-5-11.

Prohibiting wagering on all manner of games, amusements, elections and other events, see § 97-33-1.

Unlawfulness of possessing, owning or operating various gaming or gambling devices, see § 97-33-7.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

Where a city passed an ordinance making it unlawful for transient vendors to go in and upon private residences, and in and upon private property and buildings other than residences, without first having been requested or invited to do so by the owner or occupant, for the purpose of soliciting orders for the sale of goods or selling the same, the ordinance was valid as it applies to soliciting in private residences but was invalid as to the property and buildings other than residences, which includes primarily business offices and stores. Day v. Klein, 225 Miss. 191, 82 So. 2d 831 (1955).

All ordinances authorized on subjects by the legislature must be reasonable and consistent with the general law and not destructive to a lawful business. Johnson v. Town of Philadelphia, 94 Miss. 34, 47 So. 526, 19 Am. Ann. Cas. 103 (1908).

A skating rink is not a nuisance per se. Johnson v. Town of Philadelphia, 94 Miss. 34, 47 So. 526, 19 Am. Ann. Cas. 103 (1908).

If the operation of pool and billiard tables becomes a nuisance it may be suppressed as such. Crittenden v. Town of Booneville, 92 Miss. 277, 45 So. 723, 131 Am. St. R. 518 (1908).

2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

Where the use of a pool room operated by an incorporated recreation club was restricted to those who paid merely nominal dues, but whose regular contributions were expected, invited and depended upon as a part of the income of the owners in whose profits the members did not share, it was a pool room, within the meaning of the statute, although no fixed charge was made for the right to play. Recreation Club v. Miller, 192 Miss. 259, 5 So. 2d 678 (1942).

Ordinance making it unlawful to offer a prize of money or other thing of value and to award such prize to any person by lot or chance, held void. City of Oxford v. Ritz Theatre, 182 Miss. 62, 180 So. 88 (1938).

It is not a reasonable exercise of the power to regulate skating rinks for an ordinance to require them to close at 6 p.m. and remain closed until 6 o'clock a.m. Johnson v. Town of Philadelphia, 94 Miss. 34, 47 So. 526, 19 Am. Ann. Cas. 103 (1908).

Where the special charter of a city gives the city express power to prohibit the keeping of pool and billiard rooms, an ordinance thus prohibiting them is authorized. City of Corinth v. Crittenden, 94 Miss. 41, 47 So. 525 (1908).

Pool rooms legalized by the state statute cannot be prohibited by an ordinance of the municipality. Crittenden v. Town of Booneville, 92 Miss. 277, 45 So. 723, 131 Am. St. R. 518 (1908).

ATTORNEY GENERAL OPINIONS

While local governing authorities cannot enact ordinances which have the purpose or effect of prohibiting bingo halls, they may enact reasonable ordinances governing operation of halls, including zoning restrictions or restrictions on hours of operation; restrictions on hours must not conflict with provisions of Section 97-33-67. Peeples, Dec. 18, 1992, A.G. Op. #92-0816.

Municipalities are empowered to regulate and also to prohibit the operation of pool halls. Because a person who has been convicted of any felony is not eligible to obtain a permit for the retail sale of beer or light wines, he would be prevented from obtaining a permit to operate a pool hall where beer would likely be sold. Mclaurin, Aug. 6, 2004, A.G. Op. 04-0389.

RESEARCH REFERENCES

ALR. Authorization, prohibition, or regulation by municipality of the sale of merchandise on streets or highways, or their use for such purpose. 14 A.L.R.3d 896.

Validity and construction of statute or ordinance prohibiting commercial exhibition of malformed or disfigured persons. 62 A.L.R.3d 1237.

Construction and application of state or municipal enactments relating to policy or numbers games. 70 A.L.R.3d 897.

Regulation of astrology, clairvoyancy, fortunetelling, and the like. 91 A.L.R.3d 766.

Validity and construction of statute or ordinance regulating commercial video game enterprises. 38 A.L.R.4th 930.

Validity, construction, and effect of agreement exempting operator of amusement facility from liability for personal injury or death or patron. 54 A.L.R.5th 513.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 456.

1B Am. Jur. Pl & Pr Forms (Rev), Amusements and Exhibitions, Form 32 (complaint, petition, or declaration to enjoin threatened closing of theater as fire hazard).

7 Am. Jur. Pl & Pr Forms (Rev), Constitutional Law, Forms 51 et seq. (censorship).

18 Am. Jur. Proof of Facts, Obscenity-Motion Pictures §§ 60 et seq. (proof of obscenity).

25 Am. Jur. Proof of Facts 2d 613, Dangerous or Defective Amusement Ride.

Lawyers' Edition. Governmental regulation of place of amusement, entertainment, or recreation as violating rights of owner or operator under equal protection clause of Federal Constitution's Fourteenth Amendment — Supreme Court cases. 104 L. Ed. 2d 1078.

§ 21-19-35. Regulation of transient vendors and photographers; power of counties and municipalities; application of county and municipal ordinances.

The governing authorities of municipalities shall have the power to adopt reasonable ordinances for the regulation of transient vendors not inconsistent with the provisions of Sections 75-85-1 through 75-85-19. However, said authorities shall not have the power to declare residential solicitations by transient vendors who are citizens of the State of Mississippi, or who are agents of corporations domiciled in the State of Mississippi, or who are agents of foreign corporations qualified to do business in the State of Mississippi, to be a public nuisance or a misdemeanor, unless said transient vendors are not in compliance with Sections 75-85-1 through 75-85-19 or local regulations. Before transacting any business, all transient vendors shall furnish to the municipality wherein said business is to be transacted, a good and sufficient penal bond in an amount not to exceed Two Thousand Dollars ($2,000.00) conditioned that if said transient vendor shall comply with all of the provisions of the municipal ordinances relating to transient vendors said obligation shall be void, otherwise, to remain in full force and effect. Any ordinance adopted by the governing authority of a municipality under the provisions of this section shall control as to the area within such municipality, regardless of the existence of a county ordinance.

SOURCES: Codes, 1892, § 2949; 1906, § 3340; Hemingway's 1917, § 5837; 1930, § 2416; 1942, § 3374-131; Laws, 1910, ch. 200; Laws, 1922, ch. 124; Laws, 1950, ch. 491, § 131; Laws, 1960, ch. 426; Laws, 1983, ch. 517; Laws, 1988, ch. 581, § 11; Laws, 1994, ch. 522, § 2, eff from and after July 1, 1994.

Cross References — Limitation of municipalities' powers regarding local privilege taxes, see § 27-17-5.

Provisions regulating manufacture, storage, sale and possession of fireworks, see §§ 45-13-1 et seq.

Secretary of state's being agent of out-of-state carnival, fair, etc., for service of process, see §§ 75-75-1 et seq.

Prohibiting wagering on all manner of games, amusements, elections and other events, see § 97-33-1.

Unlawfulness of possessing, owning or operating various gaming or gambling devices, see § 97-33-7.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

Where a city passed an ordinance making it unlawful for transient vendors to go in and upon private residences, and in and upon private property and buildings other than residences, without first having been requested or invited to do so by the owner or occupant, for the purpose of soliciting orders for the sale of goods or selling the same, the ordinance was valid as it applies to soliciting in private residences but was invalid as to the property and buildings other than residences, which includes primarily business offices and stores. Day v. Klein, 225 Miss. 191, 82 So. 2d 831 (1955).

Where the use of a pool room operated by an incorporated recreation club was restricted to those who paid merely nominal dues, but whose regular contributions were expected, invited and depended upon as a part of the income of the owners in whose profits the members did not share, it was a pool room, within the meaning of the statute, although no fixed charge was made for the right to play. Recreation Club v. Miller, 192 Miss. 259, 5 So. 2d 678 (1942).

Ordinance making it unlawful to offer a prize of money or other thing of value and to award such prize to any person by lot or chance, held void. City of Oxford v. Ritz Theatre, 182 Miss. 62, 180 So. 88 (1938).

All ordinances authorized on subjects by the legislature must be reasonable and consistent with the general law and not destructive to a lawful business. Johnson v. Town of Philadelphia, 94 Miss. 34, 47 So. 526, 19 Am. Ann. Cas. 103 (1908).

A skating rink is not a nuisance per se. Johnson v. Town of Philadelphia, 94 Miss. 34, 47 So. 526, 19 Am. Ann. Cas. 103 (1908).

It is not a reasonable exercise of the power to regulate skating rinks for an ordinance to require them to close at 6 p. m. and remain closed until 6 o'clock a. m. Johnson v. Town of Philadelphia, 94 Miss. 34, 47 So. 526, 19 Am. Ann. Cas. 103 (1908).

But where the special charter of a city gives the city express power to prohibit the keeping of pool and billiard rooms, an ordinance thus prohibiting them is authorized. City of Corinth v. Crittenden, 94 Miss. 41, 47 So. 525 (1908).

Pool rooms legalized by the state statute cannot be prohibited by an ordinance of the municipality. Crittenden v. Town of Booneville, 92 Miss. 277, 45 So. 723, 131 Am. St. R. 518 (1908).

If the operation of pool and billiard tables becomes a nuisance it may be suppressed as such. Crittenden v. Town of Booneville, 92 Miss. 277, 45 So. 723, 131 Am. St. R. 518 (1908).

ATTORNEY GENERAL OPINIONS

The bond required by Section 75-85-13 is separate and distinct from the bond which may be imposed by either municipalities and/or counties under Sections 21-19-35 and 19-3-83, respectively; i.e., transient vendors must comply with any and all applicable statutes. Weems, July 25, 2006, A.G. Op. 06-0269.

The term "penal bond" in Sections 21-19-35 and 19-3-83 means the same and can be used interchangeably with the more commonly used term "surety" bond. Weems, July 25, 2006, A.G. Op. 06-0269.

RESEARCH REFERENCES

ALR. Authorization, prohibition, or regulation by municipality of the sale of merchandise on streets or highways, or their use for such purpose. 14 A.L.R.3d 896.

Privacy: unsolicited mailing, distribution, house call, or telephone call as invasion of privacy. 56 A.L.R.3d 457.

Statutes or ordinances: validity and construction of statutes or ordinances prohibiting or restricting distribution of commercial advertising to private residences-modern cases. 12 A.L.R.4th 851.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 461.

60 Am. Jur. 2d, Peddlers, Solicitors, and Transient Dealers §§ 11 et seq.

14C Am. Jur. Legal Forms 2d, Peddlers, Solicitors, and Transient Dealers, §§ 198:20-198:21 (ordinances regulating peddling, soliciting, and the like).

14A Am. Jur. Legal Forms 2d, Peddlers, Solicitors, and Transient Dealers, § 198:26 (application for license or permit to peddle or solicit).

19A Am. Jur. Pl & Pr Forms (Rev), Peddlers, Solicitors, and Transient Dealers, Forms 1 et seq. (contesting regulatory ordinances).

§ 21-19-37. Regulation of "going-out-of-business" sales, "fire" sales, and similar sales.

The governing authorities of any municipality within this state are hereby authorized and empowered to adopt ordinances in the manner now provided by law to regulate the sale of goods, wares, or merchandise within the corporate limits of such municipality, subject to the provisions hereinafter named.

Such governing body is hereby authorized and empowered to enact an ordinance requiring any person, firm, or corporation desiring to conduct a sale commonly known as bankruptcy, insolvent, liquidation, assignee's, receiver's, trustee's, adjuster's, wholesale, manufacturer's, or closing-out sale, or a sale of goods damaged by fire, smoke, or water, or otherwise, to file with such governing authorities a petition for the privilege of conducting such sale, showing:

(a) the nature of the sale and the length of time required by the petitioner for conducting said sale;

(b) whether or not it is the purpose of said petitioner to replenish his stock of goods, wares, and merchandise during the course of the sale, and to what extent it is proposed to replenish said stock;

(c) the place of sale and approximate value of goods to be sold.

Such governing authorities may provide for a privilege tax in any sum not in excess of One Hundred Dollars ($100.00) for the privilege of conducting such sale, and may provide that such privilege tax shall be good and valid only for the conduct of a sale of goods in the manner and at the time and place set forth and prescribed in the application for the privilege of conducting such sale.

Nothing in this section, however, shall be construed to authorize and empower municipal governing authorities to enact any ordinances to prevent or to interfere with any sale made by a trustee under a deed of trust or an assignment, or by sheriffs, constables, or other public or court officials, or by any other person or persons acting under the authority and/or direction of any court in the course of official duty, or by any duly licensed bona fide merchant of such municipality conducting a seasonal or special sale ordinarily conducted by merchants, or by any bona fide merchant who is closing out his stock of goods and advertises such sale to that effect, or by a bona fide merchant whose own stock of goods has been damaged by fire, smoke, water, or otherwise, and who advertises as such.

Such municipal governing authorities may, by ordinance, prescribe penalties for the violation of such ordinance and may make such violation of said ordinances punishable in the manner provided by law for the punishment of misdemeanors.

The provisions of this section shall apply to all municipalities of this state, whether operating under the code charter, a special charter, commission form, or other form of government.

SOURCES: Codes, 1942, §§ 3374-79, 3374-81; Laws, 1932, ch. 218; Laws, 1950, ch. 491, §§ 79, 81, eff from and after July 1, 1950.

Cross References — Regulation of jewelry auction sales, see § 75-61-1.

Going-out-of-business sales and unsolicited goods, see §§ 75-65-1 et seq.

RESEARCH REFERENCES

ALR. Validity of municipal ordinance prohibiting house-to-house soliciting and peddling without invitation. 35 A.L.R.2d 355.

§ 21-19-39. Adoption of ordinances regulating sale at retail of goods and services on Sunday.

(1) From and after July 1, 1986, the governing authorities of counties and municipalities may adopt, in the manner provided by law, ordinances regulating, restricting and prohibiting the sale of goods and services at retail on the day of the week commonly called "Sunday." Such ordinances may regulate, restrict or prohibit such sales by types and kinds of goods and services and may

also regulate and restrict the hours during which such goods and services may be sold or offered for sale.

(2) All valid ordinances of any county or municipality regulating, restricting or prohibiting the sale of goods and services on Sunday adopted prior to July 1, 1986, pursuant to the authority granted by and in conformity with the provisions of any of the laws amended or repealed by Chapter 302, Laws of 1986, shall be and the same are hereby declared to be null and void from and after July 1, 1986; provided, however, any ordinance adopted under the provisions of any other laws of this state shall not be affected.

SOURCES: Codes, 1906, § 3372; Hemingway's 1917, § 5869; 1930, § 2450; 1942, § 3374-154; Laws, 1950, ch. 491, § 154; Laws, 1986, ch. 302, § 1, eff from and after July 1, 1986 (became law on February 4, 1986, without the Governor's signature).

RESEARCH REFERENCES

ALR. Validity, construction, and effect of "Sunday closing" or "blue" laws-modern status. 10 A.L.R.4th 246.

Am Jur. 73 Am. Jur. 2d, Sundays and Holidays §§ 25 et seq.

§ 21-19-41. Contributing to support of federal food stamp program.

Municipalities within the State of Mississippi are hereby authorized to contribute funds to the support of the federal food stamp program, operated under the direction of the United States Department of Agriculture, and administered in the State of Mississippi by the state department of public welfare. Contributions to the support of the federal food stamp program may be made by municipalities from general funds or from the proceeds of municipal sales taxes. However, no municipality shall establish a federal food stamp program where the county in which said municipality is situated has such a program in operation.

SOURCES: Codes, 1942, § 3374-191; Laws, 1968, ch. 554, § 1, eff from and after passage (approved July 2, 1968).

Cross References — Authority of municipality to match federal funds for old age assistance, see § 43-9-47.

§ 21-19-43. Encouraging establishment of industry.

The governing authorities of municipalities shall have the power and authority to aid and encourage the establishment of manufactures and other new enterprises mentioned in Section 27-31-101, Mississippi Code of 1972, and gas works, water works, and cooperative rural electrification associations, but not railroads, within the corporate limits of municipalities, by exempting all tangible property used in or necessary to the operation thereof for such purposes from municipal taxation for a period not exceeding ten years as authorized by Sections 27-31-101 and 27-31-115, Mississippi Code of 1972, and as authorized by Section 192 of the Constitution of the State of Mississippi.

SOURCES: Codes, 1892, § 2956; 1906, § 3347; Hemingway's 1917, § 5844; 1930, § 2423; 1942, § 3374-136; Laws, 1920, ch. 236; Laws, 1932, ch. 221; Laws, 1938, ch. 336; Laws, 1950, ch. 491, § 136; Laws, 1952, ch. 420, § 8.

Cross References — Municipalities advertising resources, see §§ 17-3-1 et seq. Advertising municipal activities, see § 21-19-61.

Federal Aspects — Rural Small Business Enhancement Act of 1990, P. L. 101-574 §§ 301 et seq., codified at 15 USCS § 631 et seq.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

The legislature can confer upon municipalities by general laws the power to encourage the establishment of factories within their corporate limits. Robertson v. Southern Paper Co., 119 Miss. 113, 80 So. 384 (1919).

Under this section municipalities are not authorized to exempt manufactories already established and in operation, and such exemption cannot be granted by a city on consideration that the owner of such manufactory will not appeal from an ordinance extending the limits of the town so as to embrace the manufactory establishment. Adams v. Lamb-Fish Lumber Co., 103 Miss. 491, 60 So. 645 (1912).

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 199.

1 Am. Jur. Legal Forms 2d, Advertising §§ 12:10, 12:12, 12:14-12:16 (advertising contract, general forms).

§ 21-19-44. Supporting certain local economic development organizations.

The municipal governing authorities of any municipality shall have the power and authority, in their discretion, to execute contracts and agreements with, and to appropriate, contribute and donate to, or expend budgeted funds for, local economic development organizations and designated Main Street programs.

SOURCES: Laws, 1999, ch. 340, § 1, eff from and after July 1, 1999.

Cross References — Municipalities authorized to donate or contribute to the Main Street Project, Incorporated for any economic development program, see § 21-19-44.1

ATTORNEY GENERAL OPINIONS

Municipalities may donate to a Main Street Project and to local economic development organizations office space and in-kind services, however, there is no authority for a municipality to donate the time of a full-time or part-time employee who receives compensation and benefits from the municipality, but works for a Main

Street Project or economic development organization, or to contract to provide a full-time or part-time municipal employee to a Main Street Project or local economic development organization for consideration. Farmer, Dec. 20, 2002, A.G. Op. 02-0603.

Whether a particular organization is one entitled to a donation is a fact determination which must be made by the governing authorities; the mayor alone does not have the authority to make this determination. Brewer, May 30, 2003, A.G. Op. 03-0275.

Since a city may donate funds to a Main Street program and may also contract in support of Main Street projects, such contract may provide for assignment of Main Street program duties to a city employee. This opinion modifies Farmer, Dec. 20, 2002, A.G. Op. 02-0603. Clark, June 13, 2003, A.G. Op. 03-0231.

§ 21-19-44.1. Donating to Main Street Project, Incorporated.

The governing authorities of any municipality in this state are authorized, in their discretion, to contribute, donate or appropriate annually out of any money in the treasury of the municipality, to the municipality's nonprofit corporation known as Main Street Project, Incorporated, for any economic development program or endeavor of the corporation, for the development of the municipality's central business district or for any lawful purpose of the municipality. Further, the governing authorities are authorized, in their discretion, to execute contracts and agreements and to expend municipal funds in support of any project sponsored by the corporation, the municipality or any other nonprofit corporation engaged in local economic development.

SOURCES: Laws, 1999, ch. 322, § 1, eff from and after passage (approved Mar. 11, 1999.)

Cross References — Municipalities authorized to support certain local economic development organizations and designated Main Street programs, see § 21-19-44.

ATTORNEY GENERAL OPINIONS

Municipalities may donate to a Main Street Project and to local economic development organizations office space and in-kind services, however, there is no authority for a municipality to donate the time of a full-time or part-time employee who receives compensation and benefits from the municipality, but works for a Main Street Project or economic development organization, or to contract to provide a full-time or part-time municipal employee to a Main Street Project or local economic development organization for consideration. Farmer, Dec. 20, 2002, A.G. Op. 02-0603.

Whether a particular organization is one entitled to a donation is a fact determination which must be made by the governing authorities; the mayor alone does not have the authority to make this determination. Brewer, May 30, 2003, A.G. Op. 03-0275.

Since a city may donate funds to a Main Street program and may also contract in support of Main Street projects, such contract may provide for assignment of Main Street program duties to a city employee. This opinion modifies Farmer, Dec. 20, 2002, A.G. Op. 02-0603. Clark, June 13, 2003, A.G. Op. 03-0231.

§ 21-19-45. Donating to nonprofit civic and development corporations by certain municipalities.

(1) Any municipality in the state having a population of less than five hundred according to the 1960 decennial census and being situated in a county bordering the State of Tennessee and having a 1960 population in excess of fifteen thousand but less than twenty thousand, and any municipality having a population according to the 1960 federal decennial census in excess of two thousand but less than two thousand two hundred and being in a county bordering the Pearl River and having an area in excess of eight hundred twenty-five square miles, and all municipalities located in counties with two judicial districts in which municipalities Mississippi Highway 35 runs and which have a population according to the latest available federal census in excess of three hundred forty-two but less than one thousand, acting by and through the mayor and board of aldermen, is authorized and empowered, in its discretion, to pay a sum not to exceed Two Hundred Twenty-Five Dollars ($225.00) per month to any nonprofit civic and development corporation organized and existing under the laws of the State of Mississippi for the purposes set forth herein.

(2) The funds shall be expended by said nonprofit corporation for the purpose of building, equipping, maintaining and operating a community park, a community house, tennis courts, bowling lanes, lakes, golf courses and swimming pools, for the acquisition of land and facilities to be used for the aforesaid purposes, for the purchase of land and the making of improvements thereon for industrial development, and for other public purposes, and for the repayment of loans secured for the purposes set forth herein.

(3) This section, without reference to any other statutes, shall be full and complete authority to expend the money for the purposes enumerated herein, and all powers necessary to be exercised by the mayor and board of aldermen in order to carry out the purposes of this section are herein expressly conferred on said mayor and board.

(4) The mayor and board of aldermen are further authorized and empowered to adopt any and all lawful resolutions, orders, and/or ordinances, and to do and perform any and all acts and things necessary and requisite to carry out the purposes of this section.

SOURCES: Codes, 1942, § 3374-125.3; Laws, 1964, ch. 499, §§ 1-5; Laws, 1966 Ex Sess, ch. 43, § 1; Laws, 1968, ch. 551, § 1, eff from and after passage (approved July 10, 1968).

ATTORNEY GENERAL OPINIONS

Whether a particular organization is one entitled to a donation is a fact determination which must be made by the governing authorities; the mayor alone does not have the authority to make this determination. Brewer, May 30, 2003, A.G. Op. 03-0275.

§ 21-19-46. Donating to Court Appointed Special Advocates (CASA).

The governing authority of any municipality is authorized, in its discretion, to donate to any chapter of the Court Appointed Special Advocates (CASA) out of any funds in the municipal treasury; however, the cumulative sum of donations to a chapter may not exceed the amount generated in the municipality by one-fourth (¼) mill on all of the taxable property within the municipality during the fiscal year in which the donations are made. Nothing in this section authorizes the imposition of additional tax.

SOURCES: Laws, 2011, ch. 461, § 1, eff from and after July 1, 2011.

§ 21-19-47. Donating to support bands and orchestras.

The governing authorities of municipalities shall have the power to appropriate funds each year in the amount that they may deem advisable, to be paid out of the treasury of such municipalities, toward aiding, supporting and maintaining a band or concert orchestra for the amusement and entertainment of the citizens of such municipalities.

SOURCES: Codes, Hemingway's 1917, § 5871; 1930, § 2451; 1942, § 3374-155; Laws, 1912, ch. 122; Laws, 1950, ch. 491, § 155; Laws, 1977, ch. 382, eff from and after passage (approved March 18, 1977).

ATTORNEY GENERAL OPINIONS

If private entertainment group or company is not band or concert orchestra, no statutory authority exists for donations of municipal funds; however, municipal governing authorities do have discretionary authority to expend certain amount of municipal funds for purposes of advertising and bringing into favorable notice opportunities, possibilities and resources of municipality. Carter, Feb. 7, 1990, A.G. Op. #90-0069.

Whether a particular organization is one entitled to a donation is a fact determination which must be made by the governing authorities; the mayor alone does not have the authority to make this determination. Brewer, May 30, 2003, A.G. Op. 03-0275.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 198.

§ 21-19-49. Appropriation of funds or conveyance of buildings and property to school districts by local governments; contracts for provision of additional police protection for schools; off-duty law enforcement officers authorized to use public uniforms and equipment for school security purposes; municipalities authorized to donate to public school districts for certain purposes.

(1) The governing authority of any municipality or the board of supervisors of any county are hereby authorized and empowered to appropriate money or dedicate and convey municipally-owned buildings and property or county-owned buildings and property, as the case may be, to the school district or districts situated within that municipality or county for the purpose of erecting, purchasing or otherwise providing the school building or a site for such school building of such school district, in cases where the governing authority or board of supervisors are of the opinion that the location of such school building within the corporate limits of the municipality or the county, or in close proximity thereto, will be of special benefit to the inhabitants of the municipality or county.

(2) Municipalities, municipal police departments and the sheriffs' departments may contract with the school board of any school district to provide additional Law Enforcement Officers Training Academy-certified police protection to said school district on such terms and for such reimbursement as the school district and the entity may agree in their discretion.

(3) The governing authority of any municipality or the board of supervisors of any county may allow off-duty municipal or county law enforcement officers who are hired individually for security purposes by the school district or districts within that municipality or county to use municipal or county law enforcement uniforms and equipment during such off-duty employment.

(4) The governing authority of any municipality, in its discretion, may donate funds, equipment or in-kind services to any school district located within the boundaries of the municipality to assist the voluntary character development or public service programs of that school district.

SOURCES: Codes, 1930, § 2553; 1942, § 3374-156; Laws, 1928, Ex. ch. 39; Laws, 1950, ch. 491, § 156; Laws, 1996, ch. 520, § 1; Laws, 2000, ch. 359, § 1; Laws, 2005, ch. 379, § 1, eff from and after July 1, 2005.

Cross References — Municipalities exercising eminent domain for school purposes, see § 21-37-47.

ATTORNEY GENERAL OPINIONS

A municipality or county may donate money to a school district for the purpose of erecting, purchasing, or otherwise providing a school building or the site for a school building; however, there is no authority by which a municipality or county may donate money to a nonprofit organization designed to receive contributions from individuals and businesses and make grants to schools and teachers.

Nunnelee, November 20, 1998, A.G. Op. #98-0602.

The governing authorities of a municipality do not have authority to donate funds to a public school district for athletic lockers. Gabriel, Jan. 7, 2000, A.G. Op. #99-0701.

No statutory authority can be found which would permit school employees to search a student vehicle that is parked on a city street, to designate parking on a city street or to control traffic flow of a city street; however, a school district and a city may enter into an interlocal agreement for the provision of traffic control, and city and county law enforcement agencies are authorized to contract with school districts for the provision of police protection. Taylor, July 7, 2003, A.G. Op. 03-0334.

Section 21-19-49(3) does not authorize the governing authorities of a city to allow off-duty municipal police officers to utilize municipal law enforcement uniforms and equipment during off-duty security employment with a community college. McWilliams, Mar. 10, 2006, A.G. Op. 06-0055.

§ 21-19-51. Donating to fair associations.

The governing authorities of municipalities shall have the power and authority, in their discretion, to contribute, appropriate or donate to fair associations, domiciled in their respective county, a sum of money not to exceed Ten Thousand Dollars ($10,000.00) per annum for the purpose of advertising, displaying, exhibiting or promoting the agricultural or industrial resources of such municipality or its respective county. The expenditure of such money, when contributed, appropriated or donated, shall be under the control of the municipality, and such governing authorities are hereby authorized and empowered to appoint one or as many as three individuals, in their discretion, to represent the municipal authorities in the proper expenditure of such money for said purpose in conjunction with the fair association. Before contributing, appropriating or donating any money to any fair association, such governing authorities shall publish notice of their intention to contribute, appropriate or donate money to said fair association, giving the amount of, and the date of making said contribution, appropriation or donation, in some newspaper published in the municipality, or having a general circulation therein if none be there published, for three weeks ending not less than ten days prior to the making of any contribution, appropriation or donation. If, before the making of said contribution, appropriation or donation, twenty per centum of the adult taxpayers of the municipality shall petition against such contribution, appropriation or donation, then the said contribution, appropriation or donation shall not be made, unless authorized by a majority of the electors voting in an election to be ordered for that purpose. All of the expenses of publishing the notice herein provided for and of holding any election hereunder shall be paid out of the municipal treasury.

SOURCES: Codes, Hemingway's 1921 Supp. § 6069e; 1930, § 2460; 1942, § 3374-157; Laws, 1918, ch. 200; Laws, 1950, ch. 491, § 157, eff from and after July 1, 1950.

Cross References — Municipalities and counties appropriating money to pay awards aiding fairs, see § 17-3-7.

ATTORNEY GENERAL OPINIONS

Whether a particular organization is one entitled to a donation is a fact determination which must be made by the governing authorities; the mayor alone does not have the authority to make this determination. Brewer, May 30, 2003, A.G. Op. 03-0275.

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 198, 199, 205.

§ 21-19-53. Donating to support historical museums by certain municipalities.

The mayor and board of aldermen of any municipality wherein there is located an historic museum operated by an historical society on a nonprofit basis and which municipality is situated in a county bordered by the Mississippi River and having therein a national military park and a national military cemetery are hereby authorized and empowered to donate a sum not exceeding One Thousand Dollars ($1,000.00) per annum to such historic museum.

SOURCES: Codes, 1942, § 3374-157.5; Laws, 1956, ch. 355.

ATTORNEY GENERAL OPINIONS

Whether a particular organization is one entitled to a donation is a fact determination which must be made by the governing authorities; the mayor alone does not have the authority to make this determination. Brewer, May 30, 2003, A.G. Op. 03-0275.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties and Other Political Subdivisions § 198.

§ 21-19-55. Donating to patriotic organizations.

The council or board of aldermen of any municipality in the state is hereby authorized, in its discretion, to donate a sum not to exceed Five Thousand Dollars ($5,000.00) to build or aid any post of the American Legion or the chapter of the Daughters of the American Revolution, any chapter of the United Daughters of the Confederacy, or any post, unit or chapter of any patriotic organization within the county in building a memorial to the veterans of World Wars I and II, and a sum not to exceed One Thousand Dollars ($1,000.00) to aid in defraying the cost of the erection of suitable memorials to deceased soldiers, sailors, and marines of the late world wars. Such appropriation may be made even though no provision has been made therefor in the municipal budget.

SOURCES: Codes, Hemingway's 1917, §§ 3798, 3810, 3811; Hemingway's 1921 Supp. § 3811c; 1930, § 290; 1942, § 2998; Laws, 1908, ch. 134; Laws, 1916, chs. 143, 235; Laws, 1918, ch. 205; Laws, 1920, ch. 289; Laws, 1922, ch. 302; Laws, 1924, chs. 217, 222; Laws, 1926, chs. 204, 212, 305, 306; Laws, 1928, chs. 233, 236; Laws, 1930, chs. 33, 56, 185; Laws, 1938, chs. 299, 326; Laws, 1956, ch. 181; Laws, 1958, ch. 212; Laws, 1962, ch. 251, eff from and after passage (approved June 1, 1962).

Cross References — Municipality donating land to U.S. for veterans' hospital or soldiers' home, see § 35-3-1.

Municipality providing quarters for veterans' organizations, see § 35-3-5.

Conditions under which quitclaim deed may be issued by municipality, see § 89-1-25.

JUDICIAL DECISIONS

1. In general.

County cannot appropriate money to private corporation. Brister v. Leflore County, 156 Miss. 240, 125 So. 816 (1930).

ATTORNEY GENERAL OPINIONS

If governing authorities find, as matter of record, that pavilion would be "suitable memorial," Town of Beaumont may legally donate amount within limitations of statute; donation must go to local patriotic organization (i.e., V.F.W.) and not to Ladies Fire Auxiliary; donation may be made in cash or in-kind, as long as dollar value of any in-kind donations does not exceed statutory limits; there is no prohibition against city making such donation in successive years, as long as statutory limits are not exceeded in any one fiscal year. Holliman, Oct. 26, 1990, A.G. Op. #90-0267.

The statute limits donations to patriotic organizations for the erection of specific monuments but does not limit expenditures for maintenance of monuments donated to and owned by the municipality; thus, if a group of individuals erects a monument on city property and donates it to the city, the city may then use public funds to maintain the monument. Bowman, June 12, 1998, A.G. Op. #98-0308.

Whether a particular organization is one entitled to a donation is a fact determination which must be made by the governing authorities; the mayor alone does not have the authority to make this determination. Brewer, May 30, 2003, A.G. Op. 03-0275.

§ 21-19-57. Donating to American Red Cross.

Any mayor and board of commissioners of any city and/or any mayor and board of aldermen of any municipality in this state, are hereby authorized and empowered, in their discretion, to donate annually, out of any moneys in the municipal treasury, to be drawn by warrant thereon, a sum not exceeding One Hundred Dollars ($100.00) per million of assessed valuation to the support of a local chapter of the American Red Cross, in said municipality.

SOURCES: Codes, Hemingway's 1917, §§ 3798, 3810, 3811; Hemingway's 1921 Supp. § 3811c; 1930, § 290; 1942, § 2998; Laws, 1908, ch. 134; Laws, 1916, chs. 143, 235; Laws, 1918, ch. 205; Laws, 1920, ch. 289; Laws, 1922, ch. 302; Laws, 1924, chs. 217, 222; Laws, 1926, chs. 204, 212, 305, 306; Laws, 1928, chs.

233, 236; Laws, 1930, chs. 33, 56, 185; Laws, 1938, chs. 299, 326; Laws, 1956, ch. 181; Laws, 1958, ch. 212; Laws, 1962, ch. 251, eff from and after passage (approved June 1, 1962).

JUDICIAL DECISIONS

1. In general.

County cannot appropriate money to private corporation. Brister v. Leflore County, 156 Miss. 240, 125 So. 816 (1930).

ATTORNEY GENERAL OPINIONS

Whether municipality may donate funds for specific purpose to American Red Cross depends upon whether purpose falls within guidelines of that organization and whether Red Cross will ensure that funds are used for designated purpose; statute does not authorize city to use American Red Cross as conduit for donations which Red Cross is not authorized to make under its by-laws and guidelines. Granberry Nov. 19, 1993, A.G. Op. #93-0772.

Whether a particular organization is one entitled to a donation is a fact determination which must be made by the governing authorities; the mayor alone does not have the authority to make this determination. Brewer, May 30, 2003, A.G. Op. 03-0275.

§ 21-19-58. Donating to Mississippi Burn Care Fund.

The board of supervisors of any county, and the governing authorities of any municipality in the state, are authorized and empowered, in their discretion, to make contributions to the Mississippi Department of Health, or the University of Mississippi Medical Center after the Mississippi Burn Center is operational, for deposit to the Mississippi Burn Care Fund from the general fund or federal revenue sharing funds of such county or municipality wherein such funds may be available.

SOURCES: Laws, 1979, ch. 450; Laws, 2005, 2nd Ex Sess, ch. 47, § 2; Laws, 2007, ch. 569, § 3, eff from and after July 1, 2007.

Cross References — Mississippi Burn Care Fund, see § 7-9-70.

Board of supervisors of each county authorized to donate money to the Mississippi Burn Care Fund subject to the limitations specified in this section, see § 19-5-93.

Provision authorizing the board of supervisors of any county to levy a tax for the support of the Mississippi Burn Care Fund, see § 27-39-331.

Mississippi Burn Center, see § 37-115-45.

ATTORNEY GENERAL OPINIONS

Whether a particular organization is one entitled to a donation is a fact determination which must be made by the governing authorities; the mayor alone does not have the authority to make this determination. Brewer, May 30, 2003, A.G. Op. 03-0275.

Funds received pursuant to Sections 21-19-58 and 27-39-331 by the Burn Association prior to the 2005 change in law should belong to the Delta Regional Medical Center. Anderson, Sept. 28, 2005, A.G. Op. 05-0402.

§ 21-19-59. Donating to state colleges or universities for support of airport by certain municipalities.

Every municipality of this state, in or near which a state university or other state-supported four-year college is now or hereafter may be located, in which there has been constructed or is contemplated, an airport for use by said university or college, as the case may be, may, in the discretion of its governing authorities, contribute funds and aid and assist by the donation of lands, furnishing of materials and labor, use of general municipal operating funds, or otherwise, in acquiring a site, erecting suitable buildings, and constructing, equipping, maintaining and operating an airport for use by the university or college, as the case may be, and for use by the general public in said municipality.

SOURCES: Codes, 1892, § 2923; 1906, § 3314; Hemingway's 1917, § 5811; 1930, § 2391; 1942, § 3374-112; Laws, 1950, ch. 491, § 112; Laws, 1957, Ex. ch. 13, § 4; Laws, 1960, ch. 425; Laws, 1966, ch. 592, § 1, eff from and after passage (approved June 15, 1966).

Cross References — Sale or development of airport lands or other lands for industrial purposes, see §§ 57-7-1 et seq.

Provisions of airport authorities law, see §§ 61-3-1 et seq.

Provisions of municipal airport law, see §§ 61-5-1 et seq.

Support of airport facilities for state university and colleges, see § 61-5-71.

Procuring airports, see § 61-5-75.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2. Contracts.
3. Suits by or against municipal corporation.

4.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

The governing body of a municipality possesses only such authority as is conferred upon it by its charter or by general statutes, together with such powers as are necessary to give effect to the powers granted. Mayor & Bd. of Aldermen v. Engle, 211 Miss. 380, 51 So. 2d 564 (1951).

A city can do and perform all acts for which it has authority under its charter from the State from which it derives its existence, except such as may be in conflict with the Constitution. City of Indianola v. Sunflower County, 209 Miss. 116, 46 So. 2d 81 (1950).

Municipal powers are only those expressly conferred by statute, and necessarily implied; Such powers belong to the municipality and not to its officers. Tullos v. Town of Magee, 181 Miss. 288, 179 So. 557 (1938).

Municipalities can exercise no powers except such as are delegated to them by the state expressly or by necessary implication. Steitenroth v. City of Jackson, 99 Miss. 354, 54 So. 955 (1911).

A municipality cannot be allowed to exercise powers not clearly given it by its charter. Crittenden v. Town of Booneville, 92 Miss. 277, 45 So. 723, 131 Am. St. R. 518 (1908).

2. Contracts.

Where a purported lease contract giving to a college an option to purchase the leased property was ultra vires in that the special act under which the municipal authorities acted did not authorize the giving of an option, the option provision could not be upheld under the authority of this section. Whitworth College, Inc. v. City of Brookhaven, 161 F. Supp. 775 (S.D. Miss. 1958), aff'd, 261 F.2d 868 (5th Cir. 1958).

The power of a municipality to contract with reference to any subject matter must either be expressly covered by its charter or by general statute, or necessarily implied therefrom. Mayor & Bd. of Aldermen v. Engle, 211 Miss. 380, 51 So. 2d 564 (1951).

3. Suits by or against municipal corporation.

It is not necessary that the claim should first be presented to a municipality for allowance or rejection before suit may be instituted thereon. Pylant v. Town of Purvis, 87 Miss. 433, 40 So. 7 (1906).

Where a claim against a municipality is barred by limitation it ceases to be a debt and it is the duty of the municipality to plead the statute of limitations. Trowbridge v. Schmidt, 82 Miss. 475, 34 So. 84 (1903).

An allowance by municipal authorities of a demand barred by limitation is without consideration and ultra vires, and mandamus will not lie to compel the issuance of a warrant or to complete an imperfect one made on such an allowance. Trowbridge v. Schmidt, 82 Miss. 475, 34 So. 84 (1903).

Unless subjected thereto by statute, it is not liable to suit by garnishment or otherwise for debts arising from its exercise of governmental functions. Dollman v. Moore, 70 Miss. 267, 12 So. 23 (1892).

4.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

A city is not authorized under this section to issue bonds to purchase real estate. City of Hazlehurst v. Mayes, 96 Miss. 656, 51 So. 890 (1910).

ATTORNEY GENERAL OPINIONS

Whether a particular organization is one entitled to a donation is a fact determination which must be made by the governing authorities; the mayor alone does not have the authority to make this determination. Brewer, May 30, 2003, A.G. Op. 03-0275.

RESEARCH REFERENCES

ALR. Municipal establishment or operation of off-street public parking facilities. 8 A.L.R.2d 373.

Granting or taking of lease of property by municipality as within authorization of purchase or acquisition thereof. 11 A.L.R.2d 168.

Power of city, town, or county or their officials to compromise of claim. 15 A.L.R.2d 1359.

Sufficiency of notice of claim against municipality as regards description of personal injury or property damage. 63 A.L.R.2d 863.

Sufficiency of notice of claim against municipality as regards time of accident. 63 A.L.R.2d 888.

Sufficiency of notice of claim against municipality as regards identity, name, and residence of claimant. 63 A.L.R.2d 911.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 189, 407 et seq.

§ 21-19-61. Advertising of municipal activities by certain municipalities.

Any municipality in this state which has a population in excess of one hundred thousand people may set aside, appropriate and expend moneys for the purpose of advertising and bringing to the attention of the citizens of such municipality the reasons for and status of any municipal activity, litigation, franchise, proposed bond issue, and any other municipal matter about which it is for the best interest of the people that they be fully informed.

Such advertising and publicizing may be done by newspaper, magazine, radio, television, or by any combination of same, which in the judgment of the governing body of such municipality will be helpful toward advancing the moral, financial and other interests of such municipality.

SOURCES: Codes, 1942, § 3374-125.5; Laws, 1962, ch. 540, §§ 1-3.

Cross References — Advertising resources, see §§ 17-3-1 et seq.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 201.

1 Am. Jur. Legal Forms 2d, Advertising §§ 112:10, 12:12, 12:14-12:16 (advertising contract, general forms).

§ 21-19-63. Requiring maps of subdivisions to be furnished and approved; effect of dedication; easement declared abandoned.

The governing authorities of municipalities may provide that any person desiring to subdivide a tract of land within the corporate limits shall submit a map and plat of such subdivision, and a correct abstract of title of the land platted, to said governing authorities, to be approved by them before the same shall be filed for record in the land records of the county. Where the municipality has adopted an ordinance so providing, no such map or plat of any such subdivision shall be recorded by the chancery clerk unless same has been approved by said governing authorities. In all cases where a map or plat of the subdivision is submitted to the governing authorities of a municipality, and is by them approved, all streets, roads, alleys and other public ways set forth and shown on said map or plat shall be thereby dedicated to the public use, and shall not be used otherwise unless and until said map or plat is vacated in the manner provided by law, notwithstanding that said streets, roads, alleys or other public ways have not been actually opened for the use of the public. If any easement dedicated pursuant to the provisions of this section for a street, road, alley or other public purpose is determined to be not needed for the public purpose, the easement may be declared abandoned, and ownership of the fee underlying the easement shall revert, regardless of the date of dedication, to the adjoining property owner or owners at the time of abandonment. Ownership of the easement shall extend to the centerline of said abandoned street, road or public way. Such abandonment and reversion shall not affect any private easements which might exist.

SOURCES: Codes, 1892, § 2937; 1906, § 3328; Hemingway's 1917, § 5825; 1930, § 2405; 1942, § 3374-123; Laws, 1950, ch. 491, § 123; Laws, 2008, ch. 339, § 2; Laws, 2009, ch. 531, § 2, eff from and after passage (approved Apr. 14, 2009.)

Cross References — Acceptance of subdivision street before subdivision completed, see § 17-1-25.

Making, contents and recording of town plats, see §§ 19-27-21 et seq.

JUDICIAL DECISIONS

1. In general.
2. Applicability.

1. In general.

Square piece of property in middle of subdivided lots was public way, for purposes of rule that public ways on subdivision map or plat are dedicated to public use by submission of map or plat to and acceptance of map or plat by municipality's governing authorities. Nettleton Church of Christ v. Conwill, 707 So. 2d 1075 (Miss. 1997).

Where the plat of a subdivision established beyond the limits of a city contained the certificate of the owners and the engineers saying that the designated streets were private ways and not dedicated to the public, and restrictive covenants were placed upon the property to the same effect, there was no implied dedication of a strip of land subsequently used for drains and a dam, and the only part of the strip that could be used as a public street was the part actually improved and maintained by the city after the city limits were extended to encompass this subdivision. Sneed v. State ex rel. Biggers, 230 So. 2d 215 (Miss. 1970).

In an action to prevent the obstruction of an alley, a showing that the owners of certain lands in 1905 made and recorded a revised map showing the alley in question, use of the map as an official map of the town, the sale of lots by the original owners and subsequent purchasers according to the map, the use of the map for the purpose of the assessment, the nonassessment of streets and avenues for taxes, the opening and paving of most of the streets and avenues shown on the map, as well as other evidence, demonstrated that the town had accepted the dedication of the alley, even though it had not formally done so by ordinance or resolution. Luter v. Crawford, 230 Miss. 81, 92 So. 2d 348 (1957).

2. Applicability.

It was not shown that a county statutorily accepted a road's dedication because, while the county accepted a plat map including the road, Miss. Code Ann. § 21-19-63 did not apply to counties. Mcbroom v. Jackson County, — So. 3d —, 2014 Miss. LEXIS 491 (Miss. Oct. 2, 2014).

ATTORNEY GENERAL OPINIONS

A municipality owns the fee title to a street acquired by statutory dedication once the municipality approves the map or plat, and the municipality may not abandon a street acquired by statutory dedication by nonuse, even if the street is not constructed. Baker, March 12, 1999, A.G. Op. #99-0114.

A municipality holds fee simple title to property, including, but not limited to, streets, when the property is dedicated to the city. Herring, Sept. 11, 2006, A.G. Op. 06-0419.

RESEARCH REFERENCES

ALR. Power of mortgagor to dedicate land or interest therein. 63 A.L.R.2d 1160.

Am Jur. 23 Am. Jur. 2d, Dedication §§ 19-24.

8 Am. Jur. Pl and Pr Forms (Rev), Dedication, Forms 1-13 (dedication, complaint and answer).

4 Am. Jur. Proof of Facts, Dedication, Proof Nos. 1, 2 (dedication, acceptance, respectively).

7 Am. Jur. Proof of Facts, Maps, etc., Proof No. 1 (foundation for admissibility of map or diagram).

CJS. 26 C.J.S., Dedication § 18.

§ 21-19-65. Matching funds for social and community service programs.

The governing authorities of any municipality shall have the power to expend monies from the municipal general fund to match any other funds for the purpose of supporting social and community service programs including, but not limited to, juvenile residential treatment centers; juvenile and half-way houses; prenatal care facilities; child day care facilities; mentally ill and alcoholics half-way houses; child and adult emergency shelters; elderly home health aides programs.

SOURCES: Codes, 1942, § 7185-31; Laws, 1972, ch. 514, § 1; Laws, 1985, ch. 367, eff from and after passage (approved March 20, 1985).

Cross References — Similar provisions empowering county boards of supervisors to set up such residential treatment centers, see § 19-5-101.

Prenatal health care, §§ 41-81-1 and 41-81-3.

ATTORNEY GENERAL OPINIONS

City may contribute funds to match funds of Tate County SWEEPS (State-Wide Education Enforcement Prevention System) Task Force; phrase "any other funds" refers to funds from any source whatsoever, including federal, state, and county funds and funds from private individuals, groups and organizations Minton, April 19, 1990, A.G. Op. #90-0287.

Funds received from civil forfeiture of property involved in drug activities may not be used as a source of matching funds for the purpose of supporting social and community service programs. Ellis, Jan. 3, 1992, A.G. Op. #91-0925.

City may spend funds to match other funds for Big Brother/Big Sister Program pursuant to Miss. Code Section 21-19-65; Boys and Girls Clubs, which are very similar to Big Brothers/Big Sisters Program, are social and community service programs of type contemplated by statute; municipality may contribute funds to match funds from other sources to Boys and Girls Club for general use or for specific programs of that organization. Kirby, Mar. 3, 1993, A.G. Op. #93-0059.

Miss. Code Section 21-19-65 authorizes municipalities to spend monies to match other funds to support social and community service programs. McFatter, June 9, 1993, A.G. Op. #93-0405.

City may legally allow city bus to deliver senior citizens to and from Senior Citizens Center several days per week as part of its bus route. Shepard Sept. 9, 1993, A.G. Op. #93-0612.

Without specific authority city may not contribute funds to private nonprofit corporation; municipalities may expend municipal general fund monies as matching funds for certain types of social and community service programs, however programs offered by South Mississippi Aids Task Force do not appear to fit within framework of social and community programs set out in Section 21-19-65. Compton Oct. 12, 1993, A.G. Op. #93-0728.

Services and activities offered by nonprofit corporation that operates as multi-purpose Community Action Program serving needy persons who are poor, elderly and/or handicapped are within social and community service programs anticipated by Section 21-19-65; therefore, if City Columbus finds that to be fact, it may contribute matching funds, either cash or in-kind contributions, to corporation to support specific programs authorized by Section 21-19-65. Hicks Nov. 3, 1993, A.G. Op. #93-0641.

Where the governing authorities of a city make a factual determination that a particular program is a social and community service program pursuant to Miss. Code Section 21-19-65, they may contribute funds to match other funds received for that program. Bowman, Aug. 1, 1997, A.G. Op. #97-0417.

A municipality may contribute funds or in kind services to secure matching funds for a social and community service program of the same kind and nature as those set forth in the statute. Snyder, August 14, 1998, A.G. Op. #98-0446.

The statute authorizes donation of matching funds for the support of social and community service programs. Thomas, Mar. 2, 2001, A.G. Op. #01-0113.

A city may make an in-kind donation of buses to a city boys and girls club, after determining the fair market value of the buses in question, by either a lease or transfer of title; however, this donation would be conditioned upon the board of aldermen of the city making the factual determination that this program is of a type that is envisioned in the statute, and upon the program providing documentation of funds or other property which the city's donation would be the dollar-for-dollar (or value-for-value) match. Chrestman, Mar. 8, 2002, A.G. Op. #02-0077.

If a city finds that programs are of the type addressed in the statute, then it may expend funds to match other funds for the programs; with regard to a program which is an umbrella organization, the city must decide which of its programs fall within the statute and earmark matching funds to such specific program(s). Carter, June 14, 2002, A.G. Op. #02-0338.

A municipality must make a determination regarding the funds or other property for which the city's donation to a qualified social and community service program would be the dollar-for-dollar match. Bryant, May 9, 2003, A.G. Op. 03-0225.

Whether a particular organization is one entitled to a donation is a fact determination which must be made by the governing authorities; the mayor alone does not have the authority to make this determination. Brewer, May 30, 2003, A.G. Op. 03-0275.

Municipal governing authorities have the authority to make donations (in either cash or in-kind services) to certain nonprofit social and community service programs, provided matching funds exist from other sources. Thus, at the appropriate time, upon appropriate findings by the municipal governing authorities that educational programs proposed by a nonprofit organization satisfy the requirements of this section, a donation could be authorized. Whites, July 23, 2004, A.G. Op. 04-0264.

A municipality may donate funds or in-kind services, and the factual determination of whether a program qualifies to receive donations is left to the municipal governing authorities. Provided the proper factual findings are made by the governing authorities, the payment of phone service and utilities would also qualify as an in-kind donation. Bogen, Nov. 15, 2004, A.G. Op. 04-0557.

A policy of a municipality establishing a lower fee for use of municipal facilities for charitable benefits than charged for other private uses would be impermissible. As an alternative, however, certain statutes authorize municipal donations to certain types of qualified organizations. Baum, Feb. 17, 2006, A.G. Op. 06-0048.

Under Miss. Code Ann. § 61-5-39, the Tunica County Airport Commission, a joint venture of the Town of Tunica and Tunica County, may dispose of its unused real property by leasing or selling it to a nonprofit organization for use as a homeless shelter, with the consent of the governing authorities of both the town and the county, and using the procedures outlined in Miss. Code Ann. §§ 19-7-3, 21-17-1 or 57-7-1. Dulaney, March 16, 2007, A.G. Op. #07-00125, 2007 Miss. AG LEXIS 107.

RESEARCH REFERENCES

ALR. Institution for the punishment or rehabilitation of criminals, delinquents, or alcoholics as enjoinable nuisance. 21 A.L.R.3d 1058.

§ 21-19-67. Annual donations to chartered chapters of the Boys and Girls Clubs of America or the Young Men's Christian Association (YMCA), or to certain certified farmers' markets located within the municipality.

The governing authority of any municipality in the state, in its discretion, is authorized to donate annually, out of any funds in the municipal treasury, to:

(a) **Boys and Girls Club.** — Any chartered chapter of the Boys and Girls Clubs of America located within the municipality, provided that the cumulative sum of donations to all chapters within the municipality does not exceed the amount generated in the municipality by one-fourth (¼) mill on all of the taxable property within the municipality, during the fiscal year in which the donations are made. Nothing in this paragraph authorizes the imposition of additional tax.

(b) **Young Men's Christian Association (YMCA).** — Any chartered chapter of the YMCA located within the municipality, out of any funds in the treasury of the municipality, provided that the cumulative sum of donations to all chapters within the municipality does not exceed the amount generated in the municipality by one-fourth (¼) mill on all of the taxable property within the municipality, during the fiscal year in which the donations are made. Nothing in this paragraph authorizes the imposition of additional tax.

(c) **Farmers' markets.** — Any farmers' market that is certified by the Mississippi Department of Agriculture and Commerce and operating within the municipality, not to exceed the amount that would be generated from the levy of a one-fourth (¼) mill ad valorem tax upon all taxable property in the municipality.

SOURCES: Laws, 2009, ch. 415, § 1; Laws, 2013, ch. 396, § 3, eff from and after July 1, 2013.

§ 21-19-69. Donating to support certified farmers' market.

The governing authorities of any municipality of this state, in their discretion, may donate annually out of any money in the municipal treasury, such sums as deemed advisable to support any farmers' market that is certified by the Mississippi Department of Agriculture and Commerce and operating within the municipality, not to exceed the amount that would be generated from the levy of a one-fourth (¼) mill ad valorem tax upon all taxable property in the municipality.

SOURCES: Laws, 2012, ch. 467, § 1; brought forward without change, Laws, 2013, ch. 396, § 4, eff from and after July 1, 2013.

CHAPTER 21

Police and Police Departments

General Provisions 21-21-1
Reciprocal Law Enforcement Assistance Between Municipalities During Civil Emergencies 21-21-31

GENERAL PROVISIONS

Sec.
21-21-1. Marshal or chief of police; duties; bond.
21-21-3. Police and night marshals.
21-21-5. Purchasing dogs for use of police department.
21-21-7. Peace officers attending training schools; expenses.
21-21-9. Medical and hospital care for injured policemen.
21-21-11. Purchase of certain insurance for police; payment of premiums.

§ 21-21-1. Marshal or chief of police; duties; bond.

The marshal or chief of police shall be the chief law enforcement officer of the municipality and shall have control and supervision of all police officers employed by said municipality. The marshal or chief of police shall be an ex officio constable within the boundaries of the municipality, and he shall perform such other duties as shall be required of him by proper ordinance. Before performing any of the duties of his office, the marshal or chief of police shall give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in an amount to be determined by the municipal governing authority (which shall be not less than Fifty Thousand Dollars ($50,000.00)). The premium upon said bond shall be paid from the municipal treasury. If any marshal or chief of police shall fail to perform any of the duties of his office, it shall be the duty of the district attorney or county attorney upon receiving notice thereof to immediately file quo warranto proceedings against such official.

The provisions of this section shall be applicable to all municipalities of this state, whether operating under a code charter, special charter, or the commission form of government, except in cases of conflict between the provisions of this section and the provisions of the special charter of a municipality, or the law governing the commission form of government, in which case of conflict the provisions of the special charter or the statutes relative to the commission form of government shall control.

SOURCES: Codes, 1892, § 2997; 1906, § 3394; Hemingway's 1917, § 5922; 1930, § 2531; 1942, §§ 3374-100, 3374-111; Laws, 1950, chs. 505, 491, §§ 100, 111; Laws, 1952, ch. 364, § 1; Laws, 1986, ch. 458, § 31; Laws, 1988, ch. 488, § 9, eff from and after passage (approved April 30, 1988).

Cross References — Authority for bond issue for joint construction of jails by counties and municipalities, see § 17-5-1.

Municipalities enacting police regulations, see § 21-19-15.

Marshal's court duties, see § 21-23-13.

Duties of marshal or chief of police with respect to furnishing voting compartments for municipal elections, see § 23-15-257.

Law enforcement officers being prohibited from acquiring confiscated property, see § 25-1-51.

Specific fees lawfully demanded by marshals and constables, see §§ 25-7-1, 25-7-27.

Executing order of abatement of public health nuisance, see § 41-23-13.

Authority of municipal law enforcement agencies to acquire property seized under narcotics laws, see § 41-29-181.

Law enforcement officers' training academy law, see §§ 45-5-1 et seq.

Duty of police to arrest person violating bird and animal preserves, see § 49-5-43.

Duty of municipal police department to investigate accidents required to be reported to department of public safety, see § 63-3-411.

Duties of police officers with respect to vagrants, see § 99-29-1 et seq.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

Under 42 USCS § 1983, a municipality may be held liable only if its "policy" caused deprivation of a right protected by constitution or federal laws; one definition of "policy" being a persistent, widespread practice of city officials or employees which, although not authorized by officially adopted and promulgated policy, is so common and well settled as to constitute a custom that fairly represents municipal policy, actual or constructive knowledge of such customs being attributable to municipality's governing body or to an official to whom body had designated "policy making authority," a "policy maker" is a person who has final authority to make choice as between several alternatives, and marshal or chief of police, being chief law enforcement officer of a municipality under § 21-21-1, is "policy maker" with regard to specific decision to use chemical mace in courtroom, in what manner, and for how long. Lester v. City of Rosedale, 757 F. Supp. 741 (N.D. Miss. 1991).

In reference to instant section, since it was undisputed that defendant police chief had policy making authority in city, and since pursuant to such authority he adopted course of action with respect to training of officers under his supervision, including defendant police officer who allegedly had detained plaintiff for 8 hours without informing him of charges against him, city was equally responsible with chief of police for any liability chief might incur in regard to decision to allow defendant officer to continue in his police responsibilities despite fact he had not received proper training. Accordingly city's motion for summary judgment should be denied. White v. Taylor, 775 F. Supp. 962 (S.D. Miss. 1990), rev'd on other grounds, 959 F.2d 539 (5th Cir. 1992).

Hiring of city administrator by municipality operating under Private Charter does not imply that administrator, to whom chief of police is to report, is municipality's de facto chief law enforcement officer, and therefore does not violate provisions of § 21-21-1. Peterson v. McComb City, 504 So. 2d 208 (Miss. 1987).

It is duty of a police officer to arrest persons who commit either felonies or misdemeanors within municipality served by him. Petition of Aultman (Miss. 1949) 205 Miss. 397, 38 So. 2d 901

On considerations of public policy, officer cannot lawfully claim reward for performance of service which it was his duty to discharge. Petition of Aultman (Miss. 1949) 205 Miss. 397, 38 So. 2d 901

Where a city marshal executes and returns a summons the return need not show that it was served within the limits of the municipality as the law presumes that he acted within his territorial jurisdiction. Gulf & S.I.R.R. v. Ramsey, 98 Miss. 863, 54 So. 440 (1911).

2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

Member of police force who arrests fleeing homicide in city and county in which officer resides, the city paying him fixed salary for his services as officer, is ineligible to receive reward provided for under Code 1942, § 2482, for arrest of fleeing homicide, homicide and arrest occurring within corporate limits of city. In re Aultman, 205 Miss. 397, 38 So. 2d 901 (1949).

A marshal of a municipality is a public officer and cannot be removed from office except on an indictment and conviction. Lizano v. City of Pass Christian, 96 Miss. 640, 50 So. 981 (1910).

A seizure and sale by a town marshal acting as a constable, without the limits of the town and supervisor's district in which the town is situated, under a distress warrant issued by the mayor of such town, are invalid, and confer no title upon a purchaser at the sale. Riley v. James, 73 Miss. 1, 18 So. 930 (1895).

Const. 1890, §§ 80, 88, among other things providing for general laws to create and govern municipal corporations are prospective in operation and do not repeal existing municipal charters. Therefore this section recognizing the continued existence of such charters is not unconstitutional. Lum v. City of Vicksburg, 72 Miss. 590, 18 So. 476 (1895).

Its corporate authorities having formally accepted the provisions of the Code Chapter, the city of Jackson became bound thereby, and subsequent action of the authorities purporting to rescind the resolution of acceptance, though within twelve months, was ineffectual. State v. Govan, 70 Miss. 535, 12 So. 959 (1893).

Under this section declaring that after the chapter became operative, every municipality shall be governed by its provisions but that any municipality might within twelve months, "elect not to come under the provisions hereof," power was given municipalities affirmatively to accept the provisions of the chapter and be governed thereby. Ex parte Shlomberg, 70 Miss. 47, 11 So. 721 (1892).

ATTORNEY GENERAL OPINIONS

Because legislature has not delegated exclusive police power specifically over state fairgrounds property to particular entity, nor has it specifically taken away such power from City of Jackson by necessary implication, City of Jackson retains jurisdiction over violations of state statutes at fairgrounds (modifying conflicting prior opinions to conform with this opinion). Ross, August 26, 1992, A.G. Op. #92-0675.

Although nothing appears to prohibit constable from also serving as police chief of municipality within county, one of duties of police chief is to act as constable ex-officio within municipality; for those duties, within municipality, he or she must serve as police chief, and be compensated accordingly, and outside of municipality he or she may serve as Constable and be compensated accordingly. Mayo, Oct. 28, 1992, A.G. Op. #92-0745.

Under Miss. Code Section 21-21-1, Chief of Police exercises day-to-day supervision and control over police officers, making daily decisions as to what law enforcement duties to assign individual police officers, what positions to put officers in, and how investigations will proceed. Ramsay, Mar. 10, 1993, A.G. Op. #93-0155.

The marshal or chief of police is the chief law enforcement officer of a municipality. Nickles, Mar. 8, 2002, A.G. Op. #02-0052.

An elected chief of police may not suspend a police officer without pay or terminate a police officer. Davis, July 19, 2002, A.G. Op. #02-0396.

The mayor may request attendance but may not force attendance at a weekly staff meeting of an elected police chief. Lee, Jan. 3, 2003, A.G. Op. #02-0749.

A weekly staff meeting of the mayor and departments heads, including the police chief, does not conflict with the doctrine of separation of powers set forth in Article 1 and 2 of the Mississippi Constitution. Lee, Jan. 3, 2003, A.G. Op. #02-0749.

Residents of a municipality may meet with the mayor to discuss any matter pertaining to the operation of the municipality, including police protection, and the mayor may meet with the police chief or police officers to gather information concerning operation of the police department and may also direct residents to communicate with the police chief concerning police protection generally or specific ongoing situations in law enforcement. Lee, Jan. 3, 2003, A.G. Op. #02-0749.

The mayor may meet with police officers to obtain information concerning the operation of the police department, but the mayor does not have authority to become involved in the day to day operation of the police department or to make law enforcement decisions. Lee, Jan. 3, 2003, A.G. Op. #02-0749.

The board of aldermen may reprimand a police officer over the objection of the chief of police after seeking information from the chief of police. Lee, Jan. 3, 2003, A.G. Op. #02-0749.

The board of aldermen does not have authority to make daily decisions which arise in the management of the police department, such as decisions concerning an individual officer's shift, duties or assignments. Lee, Jan. 3, 2003, A.G. Op. #02-0749.

All school district employees, both instructional and noninstructional, are entitled to elect to receive equal monthly payments for a twelve-month period. Adams, Jan. 17, 2003, A.G. Op. #02-0750.

A municipality is without the power to abolish the position of marshal or chief of police, as Section 21-21-1 mandates that such a position exist in all municipalities. Hatcher, Feb. 14, 2003, A.G. Op. #03-0075.

A town may appoint an individual as its Chief of Police or Town Marshal to work for free until the next fiscal year, primarily for administrative purposes in securing funds for hiring of police officers and securing equipment with the police department to go into effect upon adoption of the next budget at the commencement of the next fiscal year. Hatcher, Feb. 14, 2003, A.G. Op. #03-0075.

The city manager, not the city council, appoints police officers. The police chief may but need not recommend that the city manager hire a certain police officer. Walker, Aug. 1, 2003, A.G. Op. 03-0285.

All code charter municipalities with the mayor-aldermen form of government are required to have a chief of police or marshal. Davis, Oct. 29, 2004, A.G. Op. 04-0522.

The police chief serves at the will and pleasure of the city manager and is subject to his direction and control. Johnson, Nov. 5, 2004, A.G. Op. 04-0547.

In the mayor-alderman form of municipal government the board of aldermen has no authority to interfere in the day-do-day operations of a municipal department, including the police department. The responsibility to assign individual work duties and shifts within the police department lies with the police chief. Reynolds, Sept. 23, 2005, A.G. Op. 05-0480.

Both the municipal police and the county sheriff have the authority and duty to keep the peace within municipal limits. Webster, Oct. 21, 2005, A.G. Op. 05-0485.

Authority to hire, fire, set compensation, and define duties of municipal employees rests solely with the board of aldermen, subject to mayoral veto power. Whether a part-time police chief is sufficient to satisfy the municipality's statutory duty to provide police protection is a factual determination to be made by the governing authority. If a municipality does not have a police chief, the board of aldermen must appoint one. An untrained part-time police officer is a law enforcement trainee who must be supervised by a certified officer and has two years from hiring to become certified. McLain, March 2, 2007, A.G. Op. #07-00069, 2007 Miss. AG LEXIS 82.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties and Other Political Subdivisions § 134.

5A Am. Jur. Pl & Pr Forms (Rev), Civil Service, Form 51 (police officer, review of order for reinstatement).

CJS. 62 C.J.S., Municipal Corporations §§ 573-579, 609-618.

§ 21-21-3. Police and night marshals.

The governing authorities of municipalities shall have the power and authority to employ, regulate and support a sufficient police force or night marshals, to define the duties thereof, and to furnish and supply all suitable and necessary equipment therefor.

SOURCES: Codes, 1892, § 2963; 1906, § 3359; Hemingway's 1917, § 5856; 1930, § 2436; 1942, § 3374-145; Laws, 1950, ch 491, § 145, eff from and after July 1, 1950.

Cross References — Duty to assist tobacco tax officials, see § 27-69-67.

Provisions of the law enforcement officers' training academy law, see §§ 45-5-1 et seq.

Appointment of extra deputies and police officers, see § 45-5-9.

Watchman being provided in certain hotels and lodging houses, see § 45-11-29.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 3374-145] does not make city pound keepers members of the police force, but implies the contrary. City of Hattiesburg v. Jackson, 235 Miss. 109, 108 So. 2d 596 (1959).

A city policeman in a city is authorized to arrest a person without a writ for an indictable offense against the state committed in his presence, provided the arrest was made in good faith for violating the state law. City of Hattiesburg v. Beverly, 123 Miss. 759, 86 So. 590 (1920).

ATTORNEY GENERAL OPINIONS

While chief of police has control and supervision of all police officers, authority to employ and terminate is vested with governing authority of municipality; only exception is where rule conflicts with provisions of special charter municipality or municipality governed by Commission Form of Government. Bates, August 15, 1990, A.G. Op. #90-0588.

The city council can require the joinder of the city into the multi-jurisdictional task force over the disagreement of the city's department of public safety. Bardwell, Nov. 27, 1991, A.G. Op. #91-0879.

Board of aldermen has statutory duty to provide reasonable police protection for municipality; therefore, board may pay police officers for regular duty and also for overtime work in their capacity as police officers of municipality at high school ball games inside corporate limits of town. Breeden Oct. 13 1993, A.G. Op. #93-0682.

Governing authorities of municipality may hire person as part-time police dispatcher at hourly rate set for that position and as part-time police officer at hourly rate set for that position. Harrel, Oct. 25, 1993, A.G. Op. #93-0709.

Whether police officer or extra deputy

police officer works full time or part time is administrative decision. Hatcher, Nov. 19, 1993, A.G. Op. #93-0736.

Part-time police officer may serve without pay if he/she is willing to do so; any employee may donate all or part of salary to municipality, and these funds then become public funds which are subject to statutes governing public funds. Carlisle, Feb. 16, 1994, A.G. Op. #94-0034.

Although the governing authorities of a municipality may consider recommendations of a police chief when making decisions concerning the hiring and firing of police officers, they are not required to do so, and such authorities have the exclusive general power to hire and fire police officers. Donald, July 25, 1997, A.G. Op. #97-0416.

A school district and a city may enter into an interlocal agreement for the provision of traffic control, although the duty to enforce traffic regulations lies with the police department and it can not withhold its services solely because of the lack of such an agreement. Noble, January 15, 1999, A.G. Op. #98-0714.

A municipality has authority to pay a police officer for two extra hours per day for carrying a cell phone to receive tips and information from a private organization which may assist in solving crimes; however, an officer may not be paid by the private organization for performing this same duty. Prichard, Sept. 7, 2001, A.G. Op. #01-0512.

The board of aldermen as the legislative body has responsibility to hire a sufficient number of police officers and to appropriate funds for the support of the police department, but may not micromanage the police department without running afoul of the doctrine of separation of powers. Nickles, Mar. 8, 2002, A.G. Op. #02-0052.

There is no authority for a municipality to enter into a contract or make an agreement to provide extra police protection to a business in return for compensation by the business. Gurley, Mar. 28, 2003, A.G. Op. 03-0138.

A police officer of a municipality must be sworn in before assuming any law enforcement duties, however, there is no requirement that a police officer must be sworn in by the Mayor or Vice-Mayor; a municipal court judge is the "police justice" of a municipality and, therefore, could administer the oath of office. Thomas, May 9, 2003, A.G. Op. 03-0212.

There is no authority for the governing authorities of a municipality to contract with residents of the municipality for additional or special police or fire protection. Tyner, May 9, 2003, A.G. Op. #03-0211.

No statutory authority can be found which would permit school employees to search a student vehicle that is parked on a city street, to designate parking on a city street or to control traffic flow of a city street; however, a school district and a city may enter into an interlocal agreement for the provision of traffic control, and city and county law enforcement agencies are authorized to contract with school districts for the provision of police protection. Taylor, July 7, 2003, A.G. Op. 03-0334.

Upon proper findings by the municipal governing authorities that a certain level of physical fitness is required in order for a police officer to perform his/her job duties established by the governing authorities, physical fitness standards may be enacted as a prerequisite to obtaining or maintaining a position as a police officer. Sorrell, Jan. 28, 2005, A.G. Op. 05-0028.

A municipality has a statutory duty under Miss. Code Ann. § 21-21-3 to provide sufficient police protection. The manner in which a municipality complies with that duty, and whether it can close its Police Department for a 24-hour period to give its officers leave, are determinations to be made by the municipality. Brannon, February 16, 2007, A.G. Op. #07-00068, 2007 Miss. AG LEXIS 25.

RESEARCH REFERENCES

ALR. Liability of municipality or other governmental unit for failure to provide police protection. 46 A.L.R.3d 1084.

Am Jur. 22 Am. Jur. Pl and Pr Forms (Rev), Sheriffs, Police, and Constables Forms 1, 2 (petition or application for writ of mandamus to compel reinstatement of police force).

29 Am. Jur. Proof of Facts 2d 1, Police Officer's Violent Conduct as Basis for Imposition of Governmental Liability.

35 Am. Jur. Trials 505, Police Misconduct Litigation — Hostage Situation.

§ 21-21-5. Purchasing dogs for use of police department.

The governing authorities of any municipality in the state are hereby authorized and empowered, in their discretion, to purchase by negotiation or otherwise, any breed of dogs suitable for law enforcement purposes, and pay for same out of the proceeds derived from tax levies made for their support and maintenance. Said dogs may be furnished to the police or police department of said municipality to be used by them in the enforcement of the laws of said municipality and the State of Mississippi. The governing authorities may also appropriate and pay monthly such amounts as may be necessary to maintain and care for said law enforcement dogs.

SOURCES: Codes, 1942, § 3374-145.5; Laws, 1962, ch. 542, § 1.

Cross References — Authority of county board of supervisors to purchase and keep law enforcement dogs, see § 19-5-3.

Retention by officers of assigned dogs retired from service see § 45-3-52.

RESEARCH REFERENCES

ALR. Liability, under 42 USCS § 1983, for injury inflicted by dogs under control or direction of police. 102 A.L.R. Fed. 616.

§ 21-21-7. Peace officers attending training schools; expenses.

The governing authorities of municipalities shall have the power and authority, in their discretion, to pay the expenses of any municipal peace or police officer which said officer incurs in attending any recognized training school for peace and law enforcement officers. Such governing authorities are further authorized and empowered to pay the salaries of such municipal peace and police officers during the time when such officers are attending such training schools. This section shall also apply to any other municipal officer or employee attending any recognized training school beneficial to his particular employment.

SOURCES: Codes, 1942, § 3374-167; Laws, 1948, ch 387; Laws, 1950, ch 491, § 167, eff from and after July 1, 1950.

Cross References — Provisions of the law enforcement officers' training academy law, see §§ 45-5-1 et seq.

Payment of expenses of officers attending academy, see § 45-5-11.

§ 21-21-9. Medical and hospital care for injured policemen.

In all municipalities of this state maintaining a police department, the personnel of which department is actively and exclusively engaged in police duty, the governing authorities of such municipality may pay out of the general fund of said municipality reasonable hospital and medical expenses for any member of said police department on account of any occupational disease contracted or for any accident sustained by said member by reason of his service or discharge of his duty in said department. The governing authorities of such city shall be the sole judge as to whether such illness or such injury was contracted or sustained in the line of duty of any such employee, and the reasonableness of said expenses.

SOURCES: Codes, 1942, § 3494.5; Laws, 1948, ch. 420; Laws, 1956, ch 396.

Cross References — Firemen's and policemen's disability and relief funds, see §§ 21-29-101 et seq., 21-29-201 et seq.

§ 21-21-11. Purchase of certain insurance for police; payment of premiums.

The governing authorities of any municipality having a population in excess of 140,000 people by virtue of the 1960 census are hereby authorized to purchase insurance coverage to protect members of the police force working under the direction of the municipal authorities, against any suit or claims growing out of any action of such policemen guilty of false arrest, false imprisonment, false or improper service of process, malicious prosecution or any other claim resulting from such officers' performance of official duties.

Such municipal authorities shall have the right to pay, out of the general fund of such municipality any premiums which may become due on the aforesaid insurance policies.

SOURCES: Codes, 1942, § 3374-151.5; Laws, 1971, ch. 376, § 1, eff from and after passage (approved March 16, 1971).

RESEARCH REFERENCES

ALR. Construction and application of statute providing compensation for wrongful conviction and incarceration. 34 A.L.R.4th 648.

Liability of police or peace officers for false arrest, imprisonment, or malicious prosecution as affected by claim of suppression, failure to disclose, or failure to investigate exculpatory evidence. 81 A.L.R.4th 1031.

RECIPROCAL LAW ENFORCEMENT ASSISTANCE BETWEEN MUNICIPALITIES DURING CIVIL EMERGENCIES

SEC.
21-21-31. Declaration of legislative findings.
21-21-33. Definitions.

21-21-35. Powers of municipality to provide assistance.
21-21-37. Powers of law enforcement officer while in another municipality.
21-21-39. Rights of law enforcement officer while in another municipality.
21-21-41. Payments to law enforcement officer; reimbursement to the regularly employing municipality.

§ 21-21-31. Declaration of legislative findings.

The legislature finds that the availability of law enforcement officers to a municipality in a state of civil emergency is of a statewide concern, and that it is in the public interest that municipalities needing additional law enforcement officers in a state of civil emergency be able to procure such additional law enforcement officers through reciprocal assistance from other municipalities.

SOURCES: Codes, 1942, § 3374-231; Laws, 1971, ch 345, § 1, eff from and after July 1, 1971.

Cross References — Municipalities entering into mutual assistance pacts, see § 21-19-23.

Powers of law enforcement officer in another municipality, see § 21-21-37.

Fire departments being authorized to go outside municipal limits, see § 21-25-5.

§ 21-21-33. Definitions.

"Municipality" as used in Sections 21-21-31 through 21-21-41 means any city, town, or village as defined in Section 21-1-1. "Law enforcement officer" as used herein means any policeman.

SOURCES: Codes, 1942, § 3374-232; Laws, 1971, ch. 345, § 2, eff from and after July 1, 1971.

Cross References — Classification of municipalities, see § 21-1-1.

Designation of municipalities, see § 21-1-9.

Powers of law enforcement officer while in another municipality, see § 21-21-37.

§ 21-21-35. Powers of municipality to provide assistance.

Any municipality shall have the power by resolution or order of its governing body to make provision for or to authorize its mayor or chief administrative officer or chief of police to make provision for its regularly employed law enforcement officers to assist any other municipality, when in the opinion of the mayor or other officer authorized to declare a state of civil emergency in such other municipality, there exists in such other municipality a need for the services of additional law enforcement officers to protect the health, life and property of such other municipality, its inhabitants, and the visitors thereto, by reason of riot, unlawful assembly characterized by the use of force and violence, or threat thereof by three (3) or more persons acting together or without lawful authority, or during time of natural disaster or man-made calamity.

Any municipality shall have the power to send law enforcement officers of its municipality on loan to assist other municipalities in the state in undercover work or as a special agent to combat crime. The chief administrative officer or chief of police of a municipality shall have the power to assist other chief administrative officers or chiefs of police upon a written or oral request from such municipalities; provided, however, that an oral request must be followed by a written authorization. In addition, any municipality may loan any law enforcement officer to any other law enforcement agency of the state or of any political subdivision of the state for drug enforcement purposes, the expense of the officer to be paid by the agency to which the officer is assigned.

SOURCES: Codes, 1942, § 3374-233; Laws, 1971, ch. 345, § 3; Laws, 1979, ch. 358; Laws, 1998, ch. 494, § 1, eff from and after passage (approved March 26, 1998).

Cross References — Powers of law enforcement officer while in another municipality, see § 21-21-37.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 542.

§ 21-21-37. Powers of law enforcement officer while in another municipality.

While any law enforcement officer regularly employed as such in one municipality is in the service of another municipality pursuant to Sections 21-21-31 through 21-21-41, he shall be a peace officer of such other municipality and be under the command of the law enforcement officer therein who is in charge in that municipality, with all the powers of a regular law enforcement officer in such other municipality, as fully as though he were within the municipality where regularly employed and his qualification, respectively, for office where regularly employed shall constitute his qualification for office in such other municipality, and no other oath, bond, or compensation need be made.

SOURCES: Codes, 1942, § 3374-234; Laws, 1971, ch. 345, § 4, eff from and after July 1, 1971.

§ 21-21-39. Rights of law enforcement officer while in another municipality.

Any law enforcement officer who is ordered by the official designated by the governing body of any municipality to perform police or peace duties outside the territorial limits of the municipality where he is regularly employed as such officer, shall be entitled to the same wage, salary, pension, and all other compensation and all other rights for such service, including injury or death benefits, as though the service had been rendered within the limits of the municipality where he is regularly employed. He shall also be paid for any reasonable expenses of travel, food, or lodging that he may incur while on duty outside such limits.

SOURCES: Codes, 1942, § 3374-235; Laws, 1971, ch. 345, § 5, eff from and after July 1, 1971.

Cross References — Powers of law enforcement officer while in another municipality, see § 21-21-37.

Firemen's and policemen's disability and relief funds, see §§ 21-29-101 et seq., 21-29-201 et seq.

§ 21-21-41. Payments to law enforcement officer; reimbursement to the regularly employing municipality.

All wage and disability payments, pension payments, damage to equipment and clothing, medical expense, and expenses of travel, food, and lodging shall be paid by the municipality regularly employing such law enforcement officer. Upon making such payments, the municipality that furnished the services shall, when it so requests, be reimbursed by the municipality whose authorized official requested the services out of which the payments arose. Each such municipality is hereby expressly authorized to make such payments and reimbursements notwithstanding any provision in its charter or ordinances to the contrary.

SOURCES: Codes, 1942, § 3374-236; Laws, 1971, ch 345, § 6, eff from and after July 1, 1971.

Cross References — Rights of law enforcement officer while in another municipality, see § 21-21-39.

CHAPTER 23

Municipal Courts

Sec.

21-23-1. Municipal courts established.
21-23-3. Appointment of municipal judge and prosecuting attorney in certain municipalities.
21-23-5. Appointment of municipal judge in certain municipalities; qualifications.
21-23-7. Powers and duties of municipal judge; mayor serving as municipal judge.
21-23-8. Bail; purpose; forfeiture; judgment nisi and bench warrant; revocation of authority of surety to write bail bonds upon final judgment; setting of bail.
21-23-9. Municipal judge pro tempore.
21-23-11. Clerk of the court.
21-23-12. Training and education program for municipal court clerks; instruction by Mississippi Judicial College; certificate of completion; compliance with Section 9-1-46.
21-23-13. Executive officer of the court.
21-23-15. Court officers shall not receive fees or costs.
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21-23-19. Disposition of parking violations.
21-23-20. Intermittent sentences for misdemeanor convictions.
21-23-21. Applicability of chapter.
21-23-23. Municipal Court Collections Fund created; purpose; source of funds.

§ 21-23-1. Municipal courts established.

There shall be a municipal court in all municipalities of this state. Wherever the words “police court” or “police justice” appear in the laws of this state, they shall mean municipal court or municipal judge, respectively.

SOURCES: Codes, 1892, § 3001; 1906, §§ 3398, 3399; Hemingway’s 1917, §§ 5926-5929; 1930, §§ 2535-2537; 1942, § 3374-103; Laws, 1910, ch. 169; Laws, 1950, ch. 491, § 103; Laws, 1958, ch 517, §§ 1, 2; Laws, 1960, ch. 424; Laws, 1979, ch. 401, § 1, eff from and after July 1, 1979.

Cross References — Justice court judge’s eligibility and term of office, jurisdiction of court and right of appeal, see Miss. Const. Art. 6, § 171.

Moving municipality’s site of government in emergency resulting from enemy attack, see §§ 17-7-1 et seq.

Prescribed corporate names of municipalities, see § 21-1-5.

Municipal authorities enacting police regulations, see § 21-19-15.

Conditions by which tenant holding-over may be removed by order of a justice court judge, see §§ 89-7-27 et seq.

ATTORNEY GENERAL OPINIONS

Miss. Code Sections 21-23-1 et seq. establishes municipal court as court for all violations of municipal ordinances; by law, all violations of state statutes are made violations of municipal ordinance; therefore, municipal court may handle all cases for all violations. Long, Jan. 14, 1993, A.G. Op. #92-0867.

Pursuant to Section 21-23-1, the requirement for establishment of a municipal court in a municipality is not discretionary. Hatcher, Feb. 14, 2003, A.G. Op. #03-0075.

A police officer of a municipality must be sworn before assuming any law enforcement duties, however, there is no requirement that a police officer must be sworn in by the Mayor or Vice-Mayor; a municipal court judge is the "police justice" of a municipality and, therefore, could administer the oath of office. Thomas, May 9, 2003, A.G. Op. #03-0212.

RESEARCH REFERENCES

ALR. Criminal jurisdiction of municipal or other local court. 102 A.L.R.5th 525.

Am Jur. 20 Am. Jur. 2d, Courts § 12.

CJS. 21 C.J.S., Courts § 130.

Law Reviews. 1979 Mississippi Supreme Court Review: Civil Procedure. 50 Miss. L. J. 719, December 1979.

§ 21-23-3. Appointment of municipal judge and prosecuting attorney in certain municipalities.

In all municipalities having a population of ten thousand (10,000) or more, according to the latest available federal census, there shall be a municipal judge and a prosecuting attorney, who shall be appointed by the governing authorities of the municipality at the time provided for the appointment of other officers. The municipal governing authorities may appoint one (1) additional municipal judge, who shall exercise the same authority and prerogatives of the office, regardless of the presence or absence of the other municipal judge. Except as otherwise provided in Section 21-23-5, a municipal judge shall be a qualified elector of the county in which the municipality is located and shall be an attorney at law. Such municipal judges and prosecuting attorney shall receive a salary, to be paid by the municipality, and to be fixed by the governing authorities of the municipality.

In any proceeding in which a conflict of interest arises for the prosecuting attorney, or any other reason dictates that he recuse himself, the mayor of the municipality may appoint a special prosecuting attorney for that particular proceeding. Such special prosecuting attorney shall be compensated for his services in the same manner and amount as allowed under Section 21-23-7 for appointed counsel for indigent persons.

Provided, however, the governing authorities of any municipality having a population in excess of ten thousand (10,000) persons according to the latest available federal census and situated in a county having an area in excess of nine hundred thirty-five (935) square miles and having a county court may, in their discretion, follow the provisions as set out in Section 21-23-5 for municipalities having a population of less than ten thousand (10,000).

Provided, further, the governing authorities of any municipality having a population in excess of fifty thousand (50,000) according to the latest federal decennial census may, in their discretion, provide for the appointment of not more than ten (10) municipal judges for said municipality, each of whom shall exercise the same authority and prerogatives of their office, regardless of the presence or absence of the other municipal judges.

SOURCES: Codes, 1892, § 3001; 1906, §§ 3398, 3399; Hemingway's 1917, §§ 5926-5929; 1930, §§ 2535-2537; 1942, § 3374-103; Laws, 1910, ch. 169; Laws, 1950, ch. 491, § 103; Laws, 1958, ch. 517, §§ 1, 2; Laws, 1960, ch. 424; Laws, 1974, ch. 353; Laws, 1979, ch. 401, § 2; Laws, 1989, ch. 571, § 1; Laws, 1998, ch. 530, § 1; Laws, 2006, ch. 415, § 1; Laws, 2010, ch. 406, § 1; Laws, 2014, ch. 353, § 1, eff from and after July 1, 2014.

Editor's Note — On June 29, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 2006, ch. 415, § 1.

Amendment Notes — The 2014 amendment substituted "ten (10)" for "six (6)" in last paragraph.

Cross References — Supplementing salaries of county judicial officers surrendering right to practice law, see § 9-9-13.

Matters regarding justice court judges, see §§ 9-11-2 et seq.

Governing authorities electing officers and appointing attorney generally, see § 21-15-3, 21-15-25.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

The fact that a search warrant, directed to any lawful officer of the town of Louin, was delivered by the marshal to, and served by, the sheriff, did not make the service of the warrant upon defendant in a prosecution for unlawful possession of intoxicating liquor illegal, where the marshal was present when the sheriff delivered a copy of the search warrant to the defendant, and the marshal had a right to summon such aid as in his judgment was needed to execute the search warrant both by the terms of the statute and the warrant itself, and either of the officers could have made a valid return on the warrant. Simmons v. Town of Louin, 213 Miss. 482, 57 So. 2d 133 (1952).

2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

An affidavit filed before a police justice charging wilful and unlawful possession of intoxicating beer contrary to the laws and ordinances of the city was insufficient to charge an offense since the state law permitted possession of beer for personal consumption. City of Amory v. Yielding, 203 Miss. 265, 34 So. 2d 726 (1948).

When a town is located partly in two counties, the county line running through the municipality, the mayor is nevertheless the mayor of the entire town and in consequence is an ex officio justice of the peace throughout the entire limits of the municipality, including that part in one county as well as the other; and being so, he is a justice of the peace ex officio of both counties and has authority, while acting within the municipality, to issue a search warrant authorizing a search for unlawful possession of intoxicating liquors to be executed in any part of either one of the two counties. Hathaway v. State, 188 Miss. 403, 195 So. 323 (1940).

Where the record in a criminal proceeding charging the defendant with the unlawful sale of intoxicating liquors showed a confusion of jurisdiction as to whether the trial magistrate acted as a police justice or as an ex officio justice of the peace, the conviction could not be sustained since because of such confusion the defendant would not be in a position to make a plea of former conviction or former acquittal against a further prosecution for violation either of the city ordinance or of the state laws. Wright v. City of Belzoni, 188 Miss. 334, 194 So. 919 (1940).

Mayor of city having police justice has no function as ex-officio justice of peace, and affidavit taken and search warrant issued by him are void, and evidence obtained thereunder inadmissible. Palmer v. City of Lumberton, 153 Miss. 886, 122 So. 199 (1929).

The record of a proceeding on appeal from a judgment of a police court is not required to say affirmatively that the mayor was absent or disqualified to act. City of Pascagoula v. Sharp, 136 Miss. 756, 101 So. 683 (1924).

A case in which it is held that the City of Laurel had no authority to elect a police justice pro tempore. City of Laurel v. Turner, 96 Miss. 631, 51 So. 403 (1910).

A case in which the matter of jurisdiction as to whether the proceeding was before a mayor or before a justice of the peace, appearing so conflicting and confused that the defendant is discharged. Washington v. State, 93 Miss. 270, 46 So. 539 (1908).

A justice of the peace accepting the office of mayor vacates the office of justice of the peace. State ex rel. Att'y Gen. v. Armstrong, 91 Miss. 513, 44 So. 809 (1907).

The fact that the duties of a police justice happen to be in part those which a justice of the peace might exercise does not affect his title to the office. Rich v. McLauren, 83 Miss. 95, 35 So. 337 (1903) but see Edwards v. Weeks, 633 So. 2d 1035 (Miss. 1994).

The mayor has no authority to vote in the election of a police justice except where there is a tie vote by the aldermen. Rich v. McLauren, 83 Miss. 95, 35 So. 337 (1903) but see Edwards v. Weeks, 633 So. 2d 1035 (Miss. 1994).

Officers are created for the public welfare and not for the benefit of officers, and justices of the peace cannot complain that a police justice is given jurisdiction with themselves. Hughes v. State, 79 Miss. 77, 29 So. 786 (1901).

The mayor of a municipality who is under this section ex-officio a justice of the peace within the territorial limits thereof, is also a justice of the peace of the county within the meaning of Code 1892, ch. 142 (Code 1906, ch. 147), and may participate as such in an action of unlawful detainer. Nickles v. Kendricks, 73 Miss. 711, 19 So. 582 (1896).

ATTORNEY GENERAL OPINIONS

Municipal judge and prosecuting attorney appointed under Miss. Code Section 21-23-3 are not covered by Civil Service System. Hewes, Mar. 29, 1993, A.G. Op. #92-0952.

Although mandatorily excluded by appointment authority provided in Miss. Code Section 21-23-3 from bringing full-time prosecuting attorney on board under civil service system, full-time Assistant City Attorney can be brought on board under civil service system as part of City Attorney's permanent staff, and can be assigned primarily to prosecution duties. Hewes, Mar. 29, 1993, A.G. Op. #92-0952.

Municipal judge pro tempore has same judicial immunity as municipal judge appointed pursuant to Miss. Code Section 21-23-3. Hicks, Apr. 14, 1993, A.G. Op. #93-0237.

Mayor of town having population in excess of 10,000 is not judicial officer and does not have authority to sign arrest warrants; judicial power is vested exclusively in municipal judge who must be appointed by such town. White, Aug. 23, 1993, A.G. Op. #93-0481.

There is no statutory prohibition to an individual appointed as municipal judge continuing to practice law while holding the office of municipal judge. Austin, June 18, 1999, A.G. Op. #99-0277.

A person must be an elector of a county in which a municipality is located and must be a licensed attorney at law in Mississippi to be qualified to hold the office of municipal judge pro tempore. Mims, March 16, 2007, A.G. Op. #07-00141, 2007 Miss. AG LEXIS 112.

RESEARCH REFERENCES

Law Reviews. 1979 Mississippi Supreme Court Review: Civil Procedure. 50 Miss. L. J. 719, December 1979.

Case, In search of an independent judiciary: alternatives to judicial elections in Mississippi. 13 Miss. C. L. Rev. 1, Fall, 1992.

§ 21-23-5. Appointment of municipal judge in certain municipalities; qualifications.

In any municipality having a population of less than ten thousand (10,000) according to the latest available federal census, it shall be discretionary with the governing authorities of the municipality as to whether or not a municipal judge or a prosecuting attorney, or both, shall be appointed. If the authorities of any municipality having a population of less than twenty thousand (20,000) according to the latest available federal census appoint a municipal judge, he shall be an attorney licensed in the State of Mississippi or a justice court judge of the county in which the municipality is located. The mayor or mayor pro tempore shall not serve as a municipal judge.

SOURCES: Codes, 1892, § 3001; 1906, §§ 3398, 3399; Hemingway's 1917, §§ 5926-5929; 1930, §§ 2535-2537; 1942, § 3374-103; Laws, 1910, ch. 169; Laws, 1950, ch. 491, § 103; Laws, 1958, ch. 517, §§ 1, 2; Laws, 1960, ch. 424; Laws, 1976, ch. 379; Laws, 1977, ch. 314; Laws, 1979, ch. 401, § 3; Laws, 1981, chs. 471, § 44, 496, § 1; Laws, 1982, ch. 423, § 25; Laws, 1989, ch. 571, § 2; Laws, 2010, ch. 406, § 2; Laws, 2014, ch. 386, § 1, eff from and after July 1, 2014.

Editor's Note — Laws of 1982, ch. 423, § 29, provides as follows:

"SECTION 29. Sections 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 27 and 28 of this act shall take effect and be in force from and after March 31, 1982. Sections 9, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 and 26 of this act shall take effect and be in force from and after January 1, 1984, or, with respect to a given county, from and after such earlier date as such county elects to employ a clerk for the justice court of such county in accordance with the provisions of subsection (3) of Section 7 of this act."

Amendment Notes — The 2014 amendment, in the second sentence in the first paragraph, substituted "he shall be an attorney licensed in the State of Mississippi" for "he may be a licensed attorney of such county, a licensed attorney of a county adjacent to such county" and "of the county in which the municipality is located" for "of such county" and added the last sentence; and deleted the second paragraph, which authorized, subject to funds being available, that the Mississippi Judicial College of the University of Mississippi Law Center conduct a "Municipal Judges Training Course" for mayors and mayors pro tempore who serve as municipal judges, and required that mayors elected or reelected for a term of office after July 1, 1979, must complete the training course.

Cross References — Mississippi Judicial College's justice court judge training and continuing education courses and requirement of completing, see §§ 9-11-3, 9-11-4.

Appointment of municipal judge and prosecuting attorney in a municipality having a population in excess of 10,000 in a county in excess of 935 square miles, see § 21-23-3.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

Although § 21-23-5, which allows a mayor or mayor pro tempore of a small municipality to serve as municipal judge, is not unconstitutional under the sections of the state constitution dealing with separation of powers, there is an unavoidable conflict of interest in the holding of the dual offices of mayor and municipal judge, and thus the statute will have no future application as it is contrary to the proper functioning of the judiciary. In re Grant, 631 So. 2d 758 (Miss. 1994).

For purposes of the Mississippi Code of Judicial Conduct, any officer performing judicial functions is a judge. Thus, a mayor who served as a municipal judge pursuant to § 21-23-5 was a "judge" within the contemplation of both the Rules of the Mississippi Commission on Judicial Performance and the Code of Judicial Conduct by virtue of his role as judge pro tempore of the municipal court. Mississippi Judicial Performance Comm'n v. Thomas, 549 So. 2d 962 (Miss. 1989).

The failure of a mayor to keep separate criminal dockets, as required by this section [Code 1942, § 3374-103] for his proceedings in criminal matters as mayor and for his proceedings as an ex officio justice of the peace can result in a confusion of jurisdiction sufficient to invalidate a conviction against a defendant appearing before him. Suggs v. State, 250 Miss. 730, 168 So. 2d 514 (1964).

In a proceeding on a petition for writ of prohibition against a municipality to prohibit further prosecution of a manager of a theater under a void ordinance pertaining to Sunday shows, the mayor was mandatorily the police justice of the city and was party to the suit. City of New Albany v. Benya, 228 Miss. 419, 87 So. 2d 889 (1956).

The mayor of the town of Louin by virtue of his office as police justice and as ex officio justice of the peace, had the power as an ex officio justice of the peace to issue the search warrant and it was not necessary in order to give validity to his act in issuing the search warrant that he add the title ex officio justice of peace to his official signature as mayor. Simmons v. Town of Louin, 213 Miss. 482, 57 So. 2d 133 (1952).

2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

An affidavit filed before a police justice charging wilful and unlawful possession of intoxicating beer contrary to the laws and ordinances of the city was insufficient to charge an offense since the state law permitted possession of beer for personal consumption. City of Amory v. Yielding, 203 Miss. 265, 34 So. 2d 726 (1948).

When a town is located partly in two counties, the county line running through the municipality, the mayor is nevertheless the mayor of the entire town and in consequence is an ex officio justice of the peace throughout the entire limits of the municipality, including that part in one county as well as the other; and being so, he is a justice of the peace ex officio of both counties and has authority, while acting within the municipality, to issue a search warrant authorizing a search for unlawful possession of intoxicating liquors to be executed in any part of either one of the two counties. Hathaway v. State, 188 Miss. 403, 195 So. 323 (1940).

This section making the mayor of a town an ex officio justice of the peace therein derives its authority from § 172, Constitution 1890, which allows the establishment of inferior courts, and not from § 175 thereof which deals exclusively with district justices of the peace. Hathaway v. State, 188 Miss. 403, 195 So. 323 (1940).

Judgment of conviction of possessing liquor in violation of State law held not invalid because mayor entered it on mayor's docket instead of separate justice of peace docket. Murphy v. State, 164 Miss. 296, 144 So. 699 (1932).

Mayor of city having police justice has no function as ex-officio justice of peace, and affidavit taken and search warrant issued by him are void, and evidence obtained thereunder inadmissible. Palmer v. City of Lumberton, 153 Miss. 886, 122 So. 199 (1929).

The mayor and board of aldermen are authorized to elect a mayor pro tempore who can discharge the duties of police justice of such municipality. City of Pascagoula v. Sharp, 136 Miss. 756, 101 So. 683 (1924).

The record of a proceeding on appeal from a judgment of a police court is not required to say affirmatively that the mayor was absent or disqualified to act. City of Pascagoula v. Sharp, 136 Miss. 756, 101 So. 683 (1924).

A case in which the matter of jurisdiction as to whether the proceeding was before a mayor or before a justice of the peace, appearing so conflicting and confused that the defendant is discharged. Washington v. State, 93 Miss. 270, 46 So. 539 (1908).

A justice of the peace accepting the office of mayor vacates the office of justice of the peace. State ex rel. Att'y Gen. v. Armstrong, 91 Miss. 513, 44 So. 809 (1907).

The fact that the duties of a police justice happen to be in part those which a justice of the peace might exercise does not affect his title to the office. Rich v. McLauren, 83 Miss. 95, 35 So. 337 (1903) but see Edwards v. Weeks, 633 So. 2d 1035 (Miss. 1994).

Officers are created for the public welfare and not for the benefit of officers, and justices of the peace cannot complain that a police justice is given jurisdiction with themselves. Hughes v. State, 79 Miss. 77, 29 So. 786 (1901).

The mayor of a municipality who is under this section ex-officio a justice of the peace within the territorial limits thereof, is also a justice of the peace of a county within the meaning of Code 1892, ch. 142 (Code 1906, ch. 147), and may participate as such in an action of unlawful detainer. Nickles v. Kendricks, 73 Miss. 711, 19 So. 582 (1896).

ATTORNEY GENERAL OPINIONS

A justice court judge who is not a lawyer may serve as city judge only as long as he remains a justice court judge. Navarro, Nov. 14, 1991, A.G. Op. #91-0845.

If mayor is not municipal judge or municipal judge pro tempore, then mayor has no authority to sign arrest warrants. Lindsey, August 11, 1993, A.G. Op. #93-0566.

It is discretionary with the governing authorities of a municipality having a population of less than 10,000 to determine whether to appoint either a municipal judge or prosecuting attorney, or both, and if they appoint a municipal judge, he may either be a licensed attorney in the county, a licensed attorney of a county adjacent to the county or a justice court judge of such county. Norman, January 23, 1998, A.G. Op. #98-0015.

Where a municipal judge is appointed at the discretion of the governing authorities, he serves at the pleasure of such governing authorities and may be discharged at any time, with or without cause pursuant to Section 21-3-3. Logan, March 6, 1998, A.G. Op. #98-0079.

A justice court judge may serve as a municipal judge of a city having a population of less than 10,000 only in the county in which he was elected justice court judge. Blakney, March 27, 1998, A.G. Op. #98-0165.

A town may appoint an individual as its municipal judge to work for free until the next fiscal year, to go into effect upon adoption of the next budget at the commencement of the next fiscal year to be sworn in primarily an advisor capacity at this time. Hatcher, Feb. 14, 2003, A.G. Op. #03-0075.

A municipal court judge may make a temporary appointment of a municipal prosecuting attorney until such time as the municipal prosecuting attorney is appointed in accordance with Section 21-23-5, and any compensation of such appointee shall be set by the city council. Jordan, Aug. 24, 2006, A.G. Op. 06-0414.

RESEARCH REFERENCES

Law Reviews. 1979 Mississippi Supreme Court Review: Civil Procedure. 50 Miss. L. J. 719, December 1979.

§ 21-23-7. Powers and duties of municipal judge; mayor serving as municipal judge.

(1) The municipal judge shall hold court in a public building designated by the governing authorities of the municipality and may hold court every day except Sundays and legal holidays if the business of the municipality so requires; provided, however, the municipal judge may hold court outside the boundaries of the municipality but not more than within a sixty-mile radius of the municipality to handle preliminary matters and criminal matters such as initial appearances and felony preliminary hearings. The municipal judge shall have the jurisdiction to hear and determine, without a jury and without a record of the testimony, all cases charging violations of the municipal ordinances and state misdemeanor laws made offenses against the municipality and to punish offenders therefor as may be prescribed by law. Except as otherwise provided by law, criminal proceedings shall be brought by sworn complaint filed in the municipal court. Such complaint shall state the essential elements of the offense charged and the statute or ordinance relied upon. Such complaint shall not be required to conclude with a general averment that the offense is against the peace and dignity of the state or in violation of the ordinances of the municipality. He may sit as a committing court in all felonies committed within the municipality, and he shall have the power to bind over the accused to the grand jury or to appear before the proper court having jurisdiction to try the same, and to set the amount of bail or refuse bail and commit the accused to jail in cases not bailable. The municipal judge is a conservator of the peace within his municipality. He may conduct preliminary hearings in all violations of the criminal laws of this state occurring within the municipality, and any person arrested for a violation of law within the municipality may be brought before him for initial appearance. The municipal court shall have jurisdiction of any case remanded to it by a circuit court grand jury. The municipal court shall have civil jurisdiction over actions filed pursuant to and as provided in Title 93, Chapter 21, Mississippi Code of 1972, the Protection from Domestic Abuse Act.

(2) In the discretion of the court, where the objects of justice would be more likely met, as an alternative to imposition or payment of fine and/or incarceration, the municipal judge shall have the power to sentence convicted offenders to work on a public service project where the court has established such a program of public service by written guidelines filed with the clerk for public record. Such programs shall provide for reasonable supervision of the offender and the work shall be commensurate with the fine and/or incarceration that would have ordinarily been imposed. Such program of public service may be utilized in the implementation of the provisions of Section 99-19-20,

and public service work thereunder may be supervised by persons other than the sheriff.

(3) The municipal judge may solemnize marriages, take oaths, affidavits and acknowledgments, and issue orders, subpoenas, summonses, citations, warrants for search and arrest upon a finding of probable cause, and other such process under seal of the court to any county or municipality, in a criminal case, to be executed by the lawful authority of the county or the municipality of the respondent, and enforce obedience thereto. The absence of a seal shall not invalidate the process.

(4) When a person shall be charged with an offense in municipal court punishable by confinement, the municipal judge, being satisfied that such person is an indigent person and is unable to employ counsel, may, in the discretion of the court, appoint counsel from the membership of The Mississippi Bar residing in his county who shall represent him. Compensation for appointed counsel in criminal cases shall be approved and allowed by the municipal judge and shall be paid by the municipality. The maximum compensation shall not exceed Two Hundred Dollars ($200.00) for any one (1) case. The governing authorities of a municipality may, in their discretion, appoint a public defender(s) who must be a licensed attorney and who shall receive a salary to be fixed by the governing authorities.

(5) The municipal judge of any municipality is hereby authorized to suspend the sentence and to suspend the execution of the sentence, or any part thereof, on such terms as may be imposed by the municipal judge. However, the suspension of imposition or execution of a sentence hereunder may not be revoked after a period of two (2) years. The municipal judge shall have the power to establish and operate a probation program, dispute resolution program and other practices or procedures appropriate to the judiciary and designed to aid in the administration of justice. Any such program shall be established by the court with written policies and procedures filed with the clerk of the court for public record. Subsequent to original sentencing, the municipal judge, in misdemeanor cases, is hereby authorized to suspend sentence and to suspend the execution of a sentence, or any part thereof, on such terms as may be imposed by the municipal judge, if (a) the judge or his or her predecessor was authorized to order such suspension when the sentence was originally imposed; and (b) such conviction (i) has not been appealed; or (ii) has been appealed and the appeal has been voluntarily dismissed.

(6) Upon prior notice to the municipal prosecuting attorney and upon a showing in open court of rehabilitation, good conduct for a period of two (2) years since the last conviction in any court and that the best interest of society would be served, the court may, in its discretion, order the record of conviction of a person of any or all misdemeanors in that court expunged, and upon so doing the said person thereafter legally stands as though he had never been convicted of the said misdemeanor(s) and may lawfully so respond to any query of prior convictions. This order of expunction does not apply to the confidential records of law enforcement agencies and has no effect on the driving record of a person maintained under Title 63, Mississippi Code of 1972, or any other provision of said Title 63.

(7) Notwithstanding the provisions of subsection (6) of this section, a person who was convicted in municipal court of a misdemeanor before reaching his twenty-third birthday, excluding conviction for a traffic violation, and who is a first offender, may utilize the provisions of Section 99-19-71, to expunge such misdemeanor conviction.

(8) In the discretion of the court, a plea of nolo contendere may be entered to any charge in municipal court. Upon the entry of a plea of nolo contendere the court shall convict the defendant of the offense charged and shall proceed to sentence the defendant according to law. The judgment of the court shall reflect that the conviction was on a plea of nolo contendere. An appeal may be made from a conviction on a plea of nolo contendere as in other cases.

(9) Upon execution of a sworn complaint charging a misdemeanor, the municipal court may, in its discretion and in lieu of an arrest warrant, issue a citation requiring the appearance of the defendant to answer the charge made against him. On default of appearance, an arrest warrant may be issued for the defendant. The clerk of the court or deputy clerk may issue such citations.

(10) The municipal court shall have the power to make rules for the administration of the court's business, which rules, if any, shall be in writing filed with the clerk of the court and shall include the enactment of rules related to the court's authority to issue domestic abuse protection orders pursuant to Section 93-21-1 et seq.

(11) The municipal court shall have the power to impose punishment of a fine of not more than One Thousand Dollars ($1,000.00) or six (6) months' imprisonment, or both, for contempt of court. The municipal court may have the power to impose reasonable costs of court, not in excess of the following:

Dismissal of any affidavit, complaint or charge in municipal court	$ 50.00
Suspension of a minor's driver's license in lieu of conviction	$ 50.00
Service of scire facias or return "not found"	$ 20.00
Causing search warrant to issue or causing prosecution without reasonable cause or refusing to cooperate after initiating action	$ 100.00
Certified copy of the court record	$ 5.00
Service of arrest warrant for failure to answer citation or traffic summons	$ 25.00
Jail cost per day	actual jail cost paid by the municipality but not to exceed $ 35.00
Service of court documents related to the filing of a petition or issuance of a protection from domestic abuse order under Title 93, Chapter 21, Mississippi Code of 1972	$ 25.00
Any other item of court cost	$ 50.00

No filing fee or such cost shall be imposed for the bringing of an action in municipal court.

(12) A municipal court judge shall not dismiss a criminal case but may transfer the case to the justice court of the county if the municipal court judge

is prohibited from presiding over the case by the Canons of Judicial Conduct and provided that venue and jurisdiction are proper in the justice court. Upon transfer of any such case, the municipal court judge shall give the municipal court clerk a written order to transmit the affidavit or complaint and all other records and evidence in the court's possession to the justice court by certified mail or to instruct the arresting officer to deliver such documents and records to the justice court. There shall be no court costs charged for the transfer of the case to the justice court.

(13) A municipal court judge shall expunge the record of any case in which an arrest was made, the person arrested was released and the case was dismissed or the charges were dropped or there was no disposition of such case.

SOURCES: Codes, 1892, § 3001; 1906, §§ 3398, 3399; Hemingway's 1917, §§ 5926-5929; 1930, §§ 2535-2537; 1942, §§ 3374-103, 3374-104; Laws, 1910, ch. 169; Laws, 1936, ch. 276; Laws, 1950, ch. 491, §§ 103, 104; Laws, 1958, ch. 517, §§ 1, 2; Laws, 1960, ch. 424; Laws, 1976, ch. 312; Laws, 1979, ch. 401, § 4; Laws, 1987, ch. 380, § 1; Laws, 1988, ch. 564, § 1; Laws, 1991, ch. 322, § 1; Laws, 1996, ch. 454, § 1; Laws, 1997, ch. 417, § 1; Laws, 2000, ch. 619, § 1; Laws, 2007, ch. 495, § 3; Laws, 2009, ch. 374, § 2; Laws, 2009, ch. 545, § 8; Laws, 2013, ch. 358, § 1, eff from and after July 1, 2013.

Joint Legislative Committee Note — Section 2 of ch. 374 Laws of 2009, effective from and after its passage (approved March 17, 2009), amended this section. Section 8 of ch. 545, Laws of 2009, effective July 1, 2009 (approved April 15, 2009), also amended this section. As set out above, this section reflects the language of Section 8 of ch. 545, Laws of 2009, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect on an earlier date.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (11) by deleting the dots between "not to exceed" and "$35.00." The Joint Committee ratified the correction at its August 1, 2013, meeting.

Cross References — Assistance of counsel, generally, see Miss. Const. Art. 3, §§ 25, 26.

Matters regarding justice court judges, see §§ 9-11-2 et seq.

Justice courts, power to fine and imprison for contempt, see § 9-11-15.

Compensation for special prosecuting attorneys appointed in cases involving conflict of interest, see § 21-23-3.

Specific fees of justice court, see §§ 25-7-1, 25-7-25.

Penalties for motor vehicle offenses, see §§ 63-9-11, 63-9-13.

Provision whereby person who has been convicted of a misdemeanor before reaching his twenty-third birthday, and who is first offender, may petition the court to have his record expunged, see § 99-19-71.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

Inability of justice court judge to suspend certain sentences, see § 99-27-43.

Federal Aspects — Assistance of counsel, generally, see United States Const. Amend 6.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2. Judicial misconduct.
3. Sufficiency of sworn complaint.

4.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

Defendant was charged with refusing a breath test; the municipal court that tried defendant in absentia had the authority to hear defendant's case, and testimony that defendant argued should have been heard was beyond the scope of a hearing on certiorari before the circuit court. Lott v. City of Bay Springs, 960 So. 2d 525 (Miss. Ct. App. 2006), writ of certiorari denied by 959 So. 2d 1051, 2007 Miss. LEXIS 405 (Miss. 2007).

Municipal court did not err in sentencing defendant after it had previously suspended his sentence for one year for him to receive counseling, as it was within the municipal court's discretion to suspend defendant's sentence and the court had jurisdiction to revoke that suspension if defendant committed another offense within two years of the time the sentence was originally suspended. Murrell v. City of Indianola, 858 So. 2d 183 (Miss. Ct. App. 2003).

The language of subsection (9) is permissive and does not impose a mandatory procedure upon municipal judges. Wheeler v. Stewart, 798 So. 2d 386 (Miss. 2001).

Section 21-23-7, which grants a municipal judge the authority to hear cases charging violations of municipal ordinances and state misdemeanor laws made offenses against the municipality, does not deprive a county court of jurisdiction over misdemeanors committed within a municipality that lies within the county; while a municipal court has jurisdiction when a municipality charges a defendant either under an explicit municipal ordinance or an ordinance by incorporation from state misdemeanor law, an act is considered an offense against the municipality only if the municipality brings the action. Collins v. State, 594 So. 2d 29 (Miss. 1992).

Records of criminal offenses are kept pursuant to § 45-27-1. The legislature of Mississippi has specifically authorized expunction of criminal offender records in limited cases-youth court cases, §§ 43-21-159 and 43-21-265; first offense misdemeanor convictions occurring prior to age 23, § 99-19-71; drug possession convictions occurring prior to age 26, § 41-29-150; purchase of alcoholic beverages by one under age 21, § 67-3-70; and municipal court convictions, § 21-23-7. Expunction of felony convictions which arose pursuant to guilty pleas are governed by § 99-15-57 which provides that any person who pled guilty within 6 months prior to the effective date of § 99-15-26 may apply to the court for an order expunging his or her criminal records. Under §§ 99-15-57 and 99-15-26 a circuit court has the power to expunge a felony conviction pursuant to a guilty plea under certain conditions. Accordingly, a petitioner who pled guilty to the felony of burglary might have been eligible for relief pursuant to §§ 99-15-57 and 99-15-26 if his guilty plea had occurred on or after October 1, 1982, that being the earliest date to satisfy the "within 6 months prior to" March 31, 1983, requirement of § 99-15-57. However, the petitioner pleaded guilty to burglary on October 9, 1979, 3 years prior to October 1, 1982, and admitted that he did not fall within the criterion in any of the statutes authorizing expunction, and thus the trial court did not err in denying his petition for expunction. Caldwell v. State, 564 So. 2d 1371 (Miss. 1990).

Expungement on Sunday of conviction for possession of marijuana was void because Sunday is non-judicial day, and courts may not sit on Sunday. Wactor v. John H. Moon & Sons, 516 So. 2d 1364 (Miss. 1987).

A municipal court judge properly exercised his authority, pursuant to § 21-23-7, to issue a warrant for a blood-semen test of a rape suspect, despite the suspect's contention that he had previously been indicted and that jurisdiction for the issuance of the warrant was exclusive to the circuit court, where there was no contention that the issuing judge was not a neutral and detached magistrate, there was sufficient evidence of probable cause, the suspect was not prejudiced by his attorney's not being notified of the warrant and the subsequent withdrawal of blood, and where no contention was made of counsel's ability to assist the suspect in protection of his legal rights had counsel been present. Birchfield v. State, 412 So. 2d 1181 (Miss. 1982).

The failure of a mayor to keep separate criminal dockets, as required by this section for his proceedings in criminal matters as mayor and for his proceedings as an ex officio justice of the peace can result in a confusion of jurisdiction sufficient to invalidate a conviction against a defendant appearing before him. Suggs v. State, 250 Miss. 730, 168 So. 2d 514 (1964).

In a proceeding on a petition for writ of prohibition against a municipality to prohibit further prosecution of a manager of a theater under a void ordinance pertaining to Sunday shows, the mayor was mandatorily the police justice of the city and was party to the suit. City of New Albany v. Benya, 228 Miss. 419, 87 So. 2d 889 (1956).

The mayor of the town of Louin by virtue of his office as police justice and as ex officio justice of the peace, had the power as an ex officio justice of the peace to issue the search warrant and it was not necessary in order to give validity to his act in issuing the search warrant that he add the title ex officio justice of peace to his official signature as mayor. Simmons v. Town of Louin, 213 Miss. 482, 57 So. 2d 133 (1952).

The fact that a search warrant, directed to any lawful officer of the town of Louin, was delivered by the marshal to, and served by, the sheriff, did not make the service of the warrant upon defendant in a prosecution for unlawful possession of intoxicating liquor illegal, where the marshal was present when the sheriff delivered a copy of the search warrant to the defendant, and the marshal had a right to summon such aid as in his judgment was needed to execute the search warrant both by the terms of the statute and the warrant itself, and either of the officers could have made a valid return on the warrant. Simmons v. Town of Louin, 213 Miss. 482, 57 So. 2d 133 (1952).

2. Judicial misconduct.

Judge was publicly reprimanded and suspended for 30 days for misconduct which brought the judicial office into disrepute pursuant to Miss. Const. art. VI, § 177A in failing to properly adjudicate criminal matters, and engaging in ticket-fixing, in exchange for simultaneous payments to a "drug fund" established and maintained by the town police chief, which violated Miss. Code Jud. Conduct Canons 1, 2A, 3B(1), 3B(2), 3B(8); the judge admitted that his decision to accept the lesser pleas contingent on payments into the drug fund was at least partially motivated by his desire to collect fees for the town, and this was not a mistake of the law, but a clear disregard of it, and was sanctionable. After considering the Gibson factors, the commission's recommendation was adopted. Miss. Comm'n on Judicial Performance v. Smith, 109 So. 3d 95 (Miss. 2013).

3. Sufficiency of sworn complaint.

Traffic citation issued to defendant constituted a sworn affidavit and thus provided jurisdiction to both a municipal court and a circuit court to hear a charge of DUI despite a failure to include a court date as required by Miss. Code Ann. § 63-9-21(3)(c), because defendant had actual knowledge of the date and the citation had been amended to include it. Wildmon v. City of Booneville, 980 So. 2d 304 (Miss. Ct. App. 2007), writ of certiorari denied by 979 So. 2d 691, 2008 Miss. LEXIS 188 (Miss. 2008).

Where all of the information required by Miss. Code Ann. § 63-9-21(3)(c) was contained on the traffic citation issued to defendant, and because there was no requirement that the address of the municipal court be contained on the ticket, the sworn complaint requirement of Miss. Code Ann. § 21-23-7 was met and the municipal court had jurisdiction over defendant's prosecution. Loveless v. City of Booneville, 958 So. 2d 230 (Miss. Ct. App. 2007).

4.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

An affidavit filed before a police justice charging wilful and unlawful possession of intoxicating beer contrary to the laws and ordinances of the city was insufficient to charge an offense since the state law permitted possession of beer for personal consumption. City of Amory v. Yielding, 203 Miss. 265, 34 So. 2d 726 (1948).

When a town is located partly in two counties, the county line running through the municipality, the mayor is nevertheless the mayor of the entire town and in consequence is an ex officio justice of the peace throughout the entire limits of the municipality, including that part in one county as well as the other; and being so, he is a justice of the peace ex officio of both counties and has authority, while acting within the municipality, to issue a search warrant authorizing a search for unlawful possession of intoxicating liquors to be executed in any part of either one of the two counties. Hathaway v. State, 188 Miss. 403, 195 So. 323 (1940).

This section making the mayor of a town an ex officio justice of the peace therein derives its authority from § 172, Constitution 1890, which allows the establishment of inferior courts, and not from § 175 thereof which deals exclusively with district justices of the peace. Hathaway v. State, 188 Miss. 403, 195 So. 323 (1940).

Where the record in a criminal proceeding charging the defendant with the unlawful sale of intoxicating liquors showed a confusion of jurisdiction as to whether the trial magistrate acted as a police justice or as an ex officio justice of the peace, the conviction could not be sustained since because of such confusion the defendant would not be in a position to make a plea of former conviction or former acquittal against a further prosecution for violation either of the city ordinance or of the state laws. Wright v. City of Belzoni, 188 Miss. 334, 194 So. 919 (1940).

Judgment of conviction of possessing liquor in violation of State law held not invalid because mayor entered it on mayor's docket instead of separate justice of peace docket. Murphy v. State, 164 Miss. 296, 144 So. 699 (1932).

Mayor of city having police justice has no function as ex-officio justice of peace, and affidavit taken and search warrant issued by him are void, and evidence obtained thereunder inadmissible. Palmer v. City of Lumberton, 153 Miss. 886, 122 So. 199 (1929).

The record of a proceeding on appeal from a judgment of a police court is not required to say affirmatively that the mayor was absent or disqualified to act. City of Pascagoula v. Sharp, 136 Miss. 756, 101 So. 683 (1924).

The mayor and board of aldermen are authorized to elect a mayor pro tempore who can discharge the duties of police justice of such municipality. City of Pascagoula v. Sharp, 136 Miss. 756, 101 So. 683 (1924).

Under the prior law the execution of sentence imposed for the violation of an ordinance could not be suspended by the judge of the municipality. City of Hattiesburg v. Washington, 136 Miss. 322, 101 So. 484 (1924).

A case in which the matter of jurisdiction as to whether the proceeding was before a mayor or before a justice of the peace, appearing so conflicting and confused that the defendant is discharged. Washington v. State, 93 Miss. 270, 46 So. 539 (1908).

A justice of the peace accepting the office of mayor vacates the office of justice of the peace. State ex rel. Att'y Gen. v. Armstrong, 91 Miss. 513, 44 So. 809 (1907).

The fact that the duties of a police justice happen to be in part those which a justice of the peace might exercise does not affect his title to the office. Rich v. McLauren, 83 Miss. 95, 35 So. 337 (1903) but see Edwards v. Weeks, 633 So. 2d 1035 (Miss. 1994).

The mayor has no authority to vote in the election of a police justice except where there is a tie vote by the aldermen. Rich v. McLauren, 83 Miss. 95, 35 So. 337 (1903) but see Edwards v. Weeks, 633 So. 2d 1035 (Miss. 1994).

This section, as embodied in § 3001, Code 1892, authorizing the municipal authorities of cities having four thousand or more inhabitants to elect police justices was held to be constitutional. Hughes v. State, 79 Miss. 77, 29 So. 786 (1901).

Officers are created for the public welfare and not for the benefit of officers, and justices of the peace cannot complain that a police justice is given jurisdiction with themselves. Hughes v. State, 79 Miss. 77, 29 So. 786 (1901).

The mayor of a municipality who is under this section ex-officio a justice of the peace within the territorial limits thereof, is also a justice of the peace of the county within the meaning of Code 1892, ch. 142 (Code 1906, ch. 147), and may participate as such in an action of unlawful detainer. Nickles v. Kendricks, 73 Miss. 711, 19 So. 582 (1896).

ATTORNEY GENERAL OPINIONS

Municipal court would have jurisdiction to try defendants who have been charged with criminal violations of municipal ordinances which would include municipal zoning ordinances. Via, May 16, 1990, A.G. Op. #90-0329.

Statute places affirmative duty upon municipal court judge to conduct preliminary hearings where crime occurs within municipality; however, in event municipal judge is precluded by judicial cannon or other recognized rule from conducting preliminary hearing, justice court judge of county in which crime occurred, acting as conservator of peace could conduct preliminary hearing. McMillan, August 29, 1990, A.G. Op. #90-0636.

Fees for appointed attorneys may not be imposed by municipal courts upon indigent defendants; this cost must be borne by municipality. Moore, Oct. 26, 1990, A.G. Op. #90-0153.

Tickets charging violations of state law made by patrolmen, sheriffs, or constables within a municipality should be made returnable to justice court. Brame, June 24, 1992, A.G. Op. #92-0451.

Phrase "all criminal proceedings", as used in Miss. Code Section 21-23-7, includes proceedings charging traffic offenses. Baker, Feb. 10, 1993, A.G. Op. #93-0035.

Since Miss. Code Section 21-23-7 provides that municipal judge has jurisdiction "to hear and determine, without a jury and without a record of testimony, all cases charging violations of the municipal ordinances and state misdemeanor laws", municipal court judge may hear false pretense or bad check cases. Gorrell, Mar. 3, 1993, A.G. Op. #93-0086.

Miss. Code Section 21-23-7 limits municipal court fines of up to $1,000. Gorrell, Mar. 3, 1993, A.G. Op. #93-0086.

Municipal judge, under authority of Section 21-23-7(10) may adopt municipal analog of 9-7-128. Bellman, July 14, 1993, A.G. Op. #93-0339.

Imposition of 50 cent assessment on those convicted of misdemeanors to fund undercover drug investigations is not "item of court cost" within meaning of Section 21-23-7(11). Gregory, March 2, 1994, A.G. Op. #94-0098.

The committing court has authority under Section 21-23-7(11) to enforce its orders through contempt charges. An indirect contempt of court charge may be brought by the prosecuting attorney. Due process (notice and a hearing) must be provided to any individual charged with indirect contempt charges. Gilfoy, October 11, 1996, A.G. Op. #96-0686.

If a municipal judge cannot hear a criminal case due to a conflict of interest, the case should either be transferred to the justice court or another municipal judge in the municipality. Pittman, July 25, 1997, A.G. Op. #97-0442.

Where a municipal court sentences a defendant to a work program, the defendant is entitled to be credited at the current federal minimum wage for any fine imposed; furthermore, an indigent defendant may be sentenced to a work program in lieu of a fine. Austin, Aug. 1, 1997, A.G. Op. #97-0472.

When a county public defender is appointed to represent a defendant on felony charges in a municipal court preliminary hearing, the court should allow the public defender to withdraw if the felony charges are reduced to misdemeanors, the court should then determine if a court appointed attorney is appropriate on the misdemeanor charges, and if the public defender is appointed to represent the defendant on the misdemeanor charges, then the public defender is entitled to additional compensation from the municipality under Miss. Code Section 99-15-17. Tucker, Aug. 15, 1997, A.G. Op. #97-0500.

A municipal judge may order that a defendant pay reasonable court costs, which may include a jail cost not to exceed $10.00 per day. Webb, Aug. 29, 1997, A.G. Op. #97-0538.

A municipal judge may impose a court cost of up to $15.00 to an affiant if the affiant requests that the affidavit, complaint or charge be dismissed in municipal court; the mere dismissal of a case, however, does not automatically impose a court cost to the affiant, and the judge may impose a court cost of up to $100.00 to an affiant who refuses to cooperate after initiating action; whether a failure to appear for court by an affiant constitutes a refusal is for the judge to determine. Mark, January 9, 1998, A.G. Op. #97-0834.

A municipal court pursuant to its authority under the statute may suspend sentences on such conditions as it deems advisable, and may establish and operate probation programs including the use of alternative sentencing programs administered by private companies. Maggio, June 26, 1998, A.G. Op. #98-0340.

A municipal court judge has the authority to make rules for the handling of post-conviction motions in municipal court. Miller, August 28, 1998, A.G. Op. #98-0521.

Subsection (5) of this section does not allow a court to charge a fee for defendants placed on a probation program. Hester, April 30, 1999, A.G. Op. #99-0209.

Subsection (11) of this section allows a court to impose a cost of up to $50.00 for costs associated with a defendant placed on probation. Hester, April 30, 1999, A.G. Op. #99-0209.

The imposition of a court cost under subsection (11) is within the discretion of the court. Lawrence, Feb. 9, 2001, A.G. Op. #2001-0052.

A traffic offense that has been dismissed, dropped, or has no disposition is eligible to be expunged under subsection (13), and this subsection is retroactive and applies to any case in municipal court that has been dismissed, dropped, or has no disposition regardless of the date the charges were filed. Miller, Sept. 14, 2001, A.G. Op. #01-0570.

Under subsection (11), a court may impose an item of court cost that does not exceed $50.00 for the purpose of purchasing or expanding additional municipal court facilities and, similarly, may impose such a cost for the purpose of compensating court employees; however, the expenditure of any such costs collected must be appropriated by the municipal governing authorities. Payne, Mar. 15, 2002, A.G. Op. #02-0110.

A dispatcher who takes original information from an incoming telephone call, thereby becoming a potential fact witness, may perform the administrative function of acknowledging or taking an officer's oath on a charging document the results from the situation. Holland, Apr. 5, 2002, A.G. Op. #02-0158.

If charges are docketed under the same number, they would be considered one case, and if charges are docketed under separate numbers, then each would be a different case. Payne, May 24, 2002, A.G. Op. #02-0263.

Although Section 21-23-7 requires a complaint filed in municipal court to state the statute or ordinance relied upon, the Uniform Traffic Ticket statute constitutes an exception thereto for traffic violations. Gilfoy, Oct. 25, 2002, A.G. Op. #02-0613.

A municipal judge may set a standard assessment under Section 21-23-7(11), the proceeds of which could be used for the purchase of a computer. Gilfoy, Nov. 1, 2002, A.G. Op. #02-0630.

A municipality may pay a constable for service of a municipal court warrant and then charge the cost of that fee to the defendant upon a conviction. Ringer, Feb. 21, 2003, A.G. Op. #03-0074.

A constable may not be paid mileage simply for serving a warrant, however, a municipality may pay a constable a mileage fee as warranted by Section 25-7-27 (1)(c); the municipal court is limited by Section 21-23-7(11) when imposing such mileage reimbursements as a cost of court to the defendant upon conviction. Ringer, Feb. 21, 2003, A.G. Op. #03-0074.

A municipal court may impose an item of court cost that does not exceed $50.00

for the purpose of purchasing equipment/computer software for the court's use. The expenditure of any such court costs collected must be appropriated by the municipal governing authorities. Smith, Dec. 2, 2003, A.G. Op. 03-0641.

The municipal court of a city may impose a cost of court of $ 10.00 to defray the cost of compensating the city prosecutor and/or city public defender if the city prosecutor and/or city public defender participated in the case. Patch, Aug. 20, 2004, A.G. 04-0416.

Subsection (7) of this section specifically excludes traffic violations, and therefore said law is not applicable to DUI convictions under § 63-11-30. Livingston, Sept. 3, 2004, A.G. Op. 04-0417.

A state misdemeanor charge may be enforced in municipal court as a violation of city ordinance. However, a highway patrolman, sheriff, or constable has no jurisdiction to enforce city ordinances, and must enforce the state misdemeanor laws in justice court even if the offense occurred within the city limits. Ringer, Sept. 24, 2004, A.G. Op. 04-0468.

A municipal court judge has the authority to issue restraining orders, protective orders, and similar orders to enforce its decisions in domestic violence cases heard by the court. A municipal court, otherwise, may only use contempt to enforce its orders. Collins, Jan. 15, 2005, A.G. Op. 04-0635.

Policemen acting in their capacity as employees of a city must use traffic tickets issued by that city and identifying that city's municipal court as the court hearing the cause. Any tickets issued by the sheriff's office, constables, or highway patrolmen should be issued on tickets identifying their respective departments and heard by justice court. Bush, Jan. 14, 2005, A.G. Op. 04-0641.

Any person who is a first offender, regardless of age at the time of their conviction, may petition the municipal court for expungement of a misdemeanor conviction occurring in that court. Davis, Apr. 1, 2005, A.G. Op. 05-0152.

A traffic ticket that contains the information set forth in Section 63-9-21 constitutes a "sworn affidavit" as referred to in Section 21-23-7(1) when the officer who issues the ticket has it properly attested and filed with the proper court; a criminal affidavit can be acknowledged by any person authorized by law to administer oaths and this would include a court clerk or deputy court clerk from another jurisdiction or a notary public. Aldridge, Apr. 1, 2005, A.G. Op. 05-0111.

A municipality may enter into an agreement with a constable to serve municipal warrants in the county and the constable's service fee may be collected as an item of court cost pursuant to Section 21-23-7(11). There is no authority, however, to add the constable's fee to the bond on each warrant. Redmond, Aug. 26, 2005, A.G. Op. 05-0447.

Section 21-23-7 allows establishment of a work program, usually for people who are not incarcerated. Nowak, July 28, 2006, A.G. Op. 06-0268.

A ticket/citation for non-traffic misdemeanors must be in the form of an affidavit (as is a uniform traffic citation) and must state the essential elements of the offense charged and include the ordinance or statute relied upon. Clark, Oct. 27, 2006, A.G. Op. 06-0524.

The citation must be served personally on the defendant. Henry, Nov. 17, 2006, A.G. Op. 06-0416.

A municipal court may establish and operate probation programs including the use of alternative sentencing programs, including house arrest administered by private companies, and the court may order the defendant to pay costs to the third party for such monitoring and may authorize the use of monitoring bracelets. Bruni, Dec. 15, 2006, A.G. Op. 06-0608.

A municipal court has jurisdiction to hear and decide, without a jury, an alleged violation of Miss. Code Ann. § 97-5-39(1)(a), and to punish offenders as prescribed by law. The penalty for state misdemeanors tried in a municipal court is limited to six months incarceration and/or a $1,000 fine pursuant to Miss Code Ann. § 21-13-19. Boutwell, March 16, 2007, A.G. Op. #07-00124, 2007 Miss. AG LEXIS 113.

Where a preliminary hearing is provided to a defendant charged for a felony and held as a municipal prisoner, the defendant should be bound over to a grand jury and thereby become a county prisoner after the hearing, if the judge so determines. Wiggins, March 2, 2007, A.G. Op. #07-00075, 2007 Miss. AG LEXIS 78.

RESEARCH REFERENCES

ALR. Pretrial preventive detention by state court. 75 A.L.R.3d 956.

Issuance or service of state-court arrest warrant, summons, citation, or other process as tolling criminal statute of limitations. 71 A.L.R.4th 554.

Criminal jurisdiction of municipal or other local court. 102 A.L.R.5th 525.

Law Reviews. 1979 Mississippi Supreme Court Review: Civil Procedure. 50 Miss. L. J. 719, December 1979.

§ 21-23-8. Bail; purpose; forfeiture; judgment nisi and bench warrant; revocation of authority of surety to write bail bonds upon final judgment; setting of bail.

(1)(a) The purpose of bail is to guarantee appearance and a bail bond shall not be forfeited for any other reason.

(b)(i) If a defendant in any criminal case, proceeding or matter fails to appear for any proceeding as ordered by the municipal court, then the court shall order the bail forfeited and a judgment nisi and a bench warrant issued at the time of nonappearance. The clerk of the municipal court shall notify the surety of the forfeiture by writ of scire facias, with a copy of the judgment nisi and bench warrant attached thereto, within ten (10) working days of such order of judgment nisi either by personal service or by certified mail. Failure of the clerk to provide the required notice within ten (10) working days shall constitute prima facie evidence that the order should be set aside.

(ii)1. The judgment nisi shall be returnable for ninety (90) days from the date of issuance. If during that period the defendant appears before the municipal court, or is arrested and surrendered, then the judgment nisi shall be set aside. If the surety produces the defendant or provides to the municipal court reasonable mitigating circumstances upon such showing, then the forfeiture shall not be made final. If the forfeiture is made final, a copy of the final judgment shall be served on the surety within ten (10) working days by either personal service or certified mail.

2. Reasonable mitigating circumstances shall be that the defendant is incarcerated in another jurisdiction; that the defendant is hospitalized under a doctor's care; that the defendant is in a recognized drug rehabilitation program; that the defendant has been placed in a witness protection program, in which case it shall be the duty of any agency placing the defendant into a witness protection program to notify the municipal court and the municipal court to notify the surety; or any other reason justifiable to the municipal court.

(2) If a final judgment is entered against a surety licensed by the Department of Insurance and has not been set aside after ninety (90) days, or later if such time is extended by the municipal court issuing the judgment nisi, then the municipal court shall order the department to revoke the authority of

the surety to write bail bonds. The Commissioner of Insurance shall, upon notice of the municipal court, notify the surety within five (5) working days of receipt of the order of revocation. If after ten (10) working days of the notification the revocation order has not been set aside by the municipal court, then the commissioner shall revoke the authority of the surety and all agents of the surety and shall notify the sheriff of every county of such revocation.

(3) If within eighteen (18) months of the date of the final forfeiture the defendant appears for municipal court, is arrested or surrendered to the municipal court, or if the defendant is found to be incarcerated in another jurisdiction and a hold order placed on the defendant, then the amount of bail, less reasonable extradition cost, excluding attorney fees, shall be refunded by the municipal court upon application by the surety.

(4)(a) The municipal judge shall set the amount of bail for persons charged with offenses in municipal court and may approve the bond or recognizance therefor.

(b) In instances where the municipal judge is unavailable and has not provided a bail schedule or otherwise provided for the setting of bail, it is lawful for any officer or officers designated by order of the municipal judge to take bond, cash, property or recognizance, with or without sureties, in a sum to be determined by the officer, payable to the municipality and conditioned for the appearance of the person on the return day and time of the writ before the court to which the warrant is returnable, or in cases of arrest without a warrant, on the day and time set by the court or officer for arraignment, and there remain from day to day and term to term until discharged.

(c) All bonds shall be promptly returned to the court, together with any cash deposited, and be filed and proceeded on by the court in a case of forfeiture. The chief of the municipal police or a police officer or officers designated by order of the municipal judge may approve bonds or recognizances.

(d) All bonds and recognizances in municipal court where the municipal court shall have the jurisdiction to hear and determine the case may be made payable to the municipality and shall have the effect to bind the principal and any sureties on the bond or recognizance until they shall be discharged by due course of law without renewal.

SOURCES: Laws, 1979, ch. 401, § 5; Laws, 1988, ch. 564, § 2; Laws, 2001, ch. 547, § 2; Laws, 2010, ch. 466, § 4; Laws, 2011, ch. 463, § 3, eff from and after July 1, 2011.

ATTORNEY GENERAL OPINIONS

Legislative intent of statute is not to utilize appearance bond as post-conviction remedy for collection of court cost and fines, but as means of guaranteeing that defendant will appear before court at designated time and there remain until such time as issue of his guilt is decided, at which time bonding company must be released from its obligation to municipality. Melton, August 22, 1990, A.G. Op. #90-0601.

A scire facias may be personally served on a limited surety agent, and that process will be binding on the insurer represented by that agent. Johnson, November 6, 1998, A.G. Op. #98-0672.

A municipal judge may appoint an officer to accept bonds in the judge's absence, and the officer does not have to be deputized as a deputy municipal court clerk but the statute does not allow the collection of fines by such an officer. Rook, Dec. 27, 1999, A.G. Op. #99-0679.

The statute does not allow dispatchers to accept bonds unless the dispatcher is also an officer who has been appointed by the judge; if such an officer is appointed by the municipal court judge to accept bonds, then a municipal court receipt may be used by the officer upon acceptance of a bond, and the officer should turn all money received and a copy of the receipts in to the municipal court clerk at the earliest opportunity. Rook, Dec. 27, 1999, A.G. Op. #99-0679.

An officer may release a defendant that has been charged with a traffic offense and is in his custody on a written notice to appear or if that officer has been designated by the municipal judge, may take a bond, cash or otherwise, from such a defendant. Powell, Jan. 10, 2003, A.G. Op. #02-0766.

Guidelines for judges to use in determining the amount of bail are set forth in Clay v. State, 757 So.2d 236 (Miss. 2000). Starling, Sept. 26, 2003, A.G. Op. 03-0521.

§ 21-23-9. Municipal judge pro tempore.

In any municipality where a municipal judge is appointed or elected, the governing authorities shall have the power and authority to appoint a municipal judge pro tempore who shall have the same powers and qualifications for office as the municipal judge and shall perform all duties of the municipal judge in the absence of such municipal judge or if such municipal judge is unable to serve for any reason. In the event a municipal judge pro tempore is not appointed or is absent or unable for any reason to serve, any justice court judge of the county or municipal judge of another municipality may serve in his place with the same power and authority upon designation by the municipal judge. Any municipality that appoints a municipal judge pro tempore in the absence of a municipal judge or has a justice court judge serve in the absence of a municipal court judge, as provided in this section, is authorized to compensate that municipal judge pro tempore or justice court judge in the same manner and amount as the municipality provides for the appointed or elected municipal judge who is absent.

SOURCES: Codes, 1892, § 3001; 1906, §§ 3398, 3399; Hemingway's 1917, §§ 5926-5929; 1930, §§ 2535-2537; 1942, § 3374-103; Laws, 1910, ch. 169; Laws, 1950, ch. 491, § 103; Laws, 1958, ch. 517, §§ 1, 2; Laws, 1960, ch. 424; Laws, 1979, ch. 401, § 6; Laws, 1997, ch. 437, § 1, eff from and after passage (approved March 25, 1997).

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

The mere fact that the regular police justice was in the city at the time was not sufficient to overcome the strong presumption that the issuance of a search warrant by the police justice pro tempore was valid. Raper v. State, 317 So. 2d 709 (Miss. 1975).

2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

The mayor and board of aldermen are authorized to elect a mayor pro tempore who can discharge the duties of police justice of such municipality. City of Pascagoula v. Sharp, 136 Miss. 756, 101 So. 683 (1924).

A case in which it is held that the City of Laurel had no authority to elect a police justice pro tempore. City of Laurel v. Turner, 96 Miss. 631, 51 So. 403 (1910).

ATTORNEY GENERAL OPINIONS

Municipal judge pro tempore must either be justice court judge or attorney. Hatcher, July 8, 1992, A.G. Op. #92-0480.

Under Miss. Code Section 21-23-9, city may appoint municipal judge pro tempore, in addition to two municipal judges who are already serving city. Hicks, Apr. 14, 1993, A.G. Op. #93-0237.

A municipal court judge may appoint a justice court judge of the county to serve as municipal court judge in the absence of the regular municipal court judge and municipal court judge pro tempore; a justice court judge so appointed is serving in the capacity of a municipal court judge and not the capacity of a justice court judge when handling matters before the municipal court. Williamson & Tallant, August 6, 1999, A.G. Op. #99-0387.

A justice court judge does not have authority to sign a municipal court warrant unless that justice court judge has been appointed to serve as the municipal court judge. Adams, Aug. 1, 2003, A.G. Op. 03-0368.

A municipal court judge has the authority to appoint a justice court judge of the county or a municipal court judge of another municipality to serve in his place in the event the municipal court judge and the municipal court judge pro tempore are unavailable. A justice court judge so appointed would have the same power and authority as the municipal court judge, including the authority to execute warrants. The justice court judge would be entitled to compensation in the same manner and amount as the municipality provides for the appointed or elected municipal judge who is absent; there is no authority to pay the justice court judge a separate fee for each warrant executed. Sorrell, Mar. 12, 2004, A.G. Op. 04-0101.

A municipal court judge may appoint a justice court judge to serve in his place with the same power and authority, including the authority to sign warrants. The compensation of a justice court judge so appointed is subject to approval by the governing authorities of the municipality. Lantrip, Mar. 26, 2004, A.G. Op. 04-0127.

A municipality has the authority to appoint one municipal judge pro-tempore and one justice court judge, as needed. Lantrip, Mar. 26, 2004, A.G. Op. 04-0127.

A municipal court judge cannot serve as judge pro tempore of another court where there is no presently sitting municipal court judge of the other court to make the designation required by the statute. Turnage, July 29, 2005, A.G. Op. 05-0379.

A person must be an elector of a county in which a municipality is located and must be a licensed attorney at law in Mississippi to be qualified to hold the office of municipal judge pro tempore. Mims, March 16, 2007, A.G. Op. #07-00141, 2007 Miss. AG LEXIS 112.

RESEARCH REFERENCES

ALR. Construction and validity of state provisions governing designation of substitute, pro tempore, or special judge. 97 A.L.R.5th 537.

Law Reviews. 1979 Mississippi Supreme Court Review: Civil Procedure. 50 Miss. L. J. 719, December 1979.

§ 21-23-11. Clerk of the court.

The clerk of the municipality shall be the clerk of the municipal court, unless the governing authorities shall otherwise elect. The clerk of the court shall attend the sittings of the court in person or by duly appointed deputies, and he shall be under the direction of the municipal judge. The governing authorities may authorize the municipal judge to appoint other municipal employees as deputy clerks of the court to assist the clerk of the court in the conduct of the court's responsibilities or the governing authorities may appoint deputy clerks of the court. The authorization to appoint and/or appointment of deputy clerks of the court shall be entered in the minutes of the municipality. A police officer of the municipality may be the clerk of the court or a deputy clerk of the court. The governing authorities shall provide for the training of court personnel.

The clerk of the court shall keep permanent dockets, upon which all cases shall be entered; said docket shall contain the style of the case and the nature of the charge against an accused, and the names of witnesses for the prosecution and defendant. The clerk of the court shall also keep a minute record in which all orders and judgments shall be entered. One (1) record may serve as both the docket record and minute record. The clerk of the court or deputy clerk of the court shall issue all process from the court, except arrest warrants or process for the seizure of persons and property, and shall administer the collection of all fines, penalties, fees and costs imposed by the court and deposit all collections with the municipal treasurer or equivalent officer. The clerk of the court shall purchase all dockets, minute record, stationery and other supplies for the municipal court, and have the account allowed by the municipal judge; the order allowing the same shall be entered upon the minutes, and the municipal authorities shall pay the same. The clerk of the court and deputy clerks of the court shall have power to take acknowledgments, administer any oaths required by law to be taken by any person, and take affidavits charging any crime against the municipality or state.

When the municipal judge is unavailable, persons charged with the commission of misdemeanor violations within the municipality may be brought before the clerk of the court for initial appearances required by the Mississippi Uniform Criminal Rules of Circuit Court Practice where the clerk of the court has satisfactorily completed a course of training and education on this subject conducted by the Mississippi Judicial College of the University of Mississippi Law Center and the municipal judge has established written guidelines and procedures for the clerk of the court to discharge this function. Such guidelines shall be entered in the minutes of the court and be deemed a public record and made available to defendant or counsel.

SOURCES: Codes, Hemingway's 1917, § 5930; 1930, § 2538; 1942, § 3374-105; Laws, 1910, ch. 202; Laws, 1950, ch. 491, § 105; Laws, 1979, ch. 401, § 7; Laws, 1988, ch. 418; Laws, 1989, ch. 571, § 3; Laws, 1995, ch. 506, § 1; Laws, 1995, ch. 447, § 6, eff from and after July 1, 1995.

Cross References — Foregoing being portion of clerk's duties, see § 21-7-15.

JUDICIAL DECISIONS

1. In general.

The desk sergeant of a municipal police force who was also the deputy clerk of the police court had no authority to take the affidavits of private persons which charged the commission of misdemeanors and, without the direction of the police justice, he had no authority to issue warrants of arrest for the persons charged in the affidavits. Smith v. Grady, 411 F.2d 181 (5th Cir. 1969).

The clerk of a municipality is not authorized to issue a search warrant. Jackson v. Howard, 135 Miss. 102, 99 So. 497 (1924); Porter v. State, 135 Miss. 789, 100 So. 377 (1924).

ATTORNEY GENERAL OPINIONS

Clerk of court must maintain office and records within city boundaries. Richardson, July 2, 1992, A.G. Op. #92-0481.

Clerk of municipal court does not have authority to issue arrest warrants or to issue search warrants, as clerk lacks authority to approve sufficiency of bonds. Hatcher, July 8, 1992, A.G. Op. #92-0480.

The municipal court clerk should keep the original affidavits and copies of warrants for felony cases in the office of the court clerk and may make copies for investigators. Hutcherson, Nov. 17, 2000, A.G. Op. #2000-0668.

A dispatcher who takes original information from an incoming telephone call, thereby becoming a potential fact witness, may perform the administrative function of acknowledging or taking an officer's oath on a charging document the results from the situation. Holland, Apr. 5, 2002, A.G. Op. #02-0158.

Records of the municipal court are public records and must be provided to the governing authorities, if requested. Smith, Mar. 3, 2006, A.G. Op. 06-0066.

Operation of the municipal court, of whatever nature, is under the auspices and control of the municipal judge. Smith, Mar. 3, 2006, A.G. Op. 06-0066.

The municipal judge directs the clerk's attendance upon the court. Smith, Mar. 3, 2006, A.G. Op. 06-0066.

RESEARCH REFERENCES

Law Reviews. 1979 Mississippi Supreme Court Review: Civil Procedure. 50 Miss. L. J. 719, December 1979.

§ 21-23-12. Training and education program for municipal court clerks; instruction by Mississippi Judicial College; certificate of completion; compliance with Section 9-1-46.

(1) Every person appointed as clerk of the municipal court shall be required annually to attend and complete a comprehensive course of training and education conducted or approved by the Mississippi Judicial College of the University of Mississippi Law Center. Attendance shall be required beginning with the first training seminar conducted after said clerk is appointed.

(2) The Mississippi Judicial College of the University of Mississippi Law Center shall prepare and conduct a course of training and education for municipal court clerks of the state. The course shall consist of at least twelve (12) hours of training per year. After completion of the first year's requirement, a maximum of six (6) hours training, over and above the required twelve (12) hours, may be carried forward from the previous year. The content of the course of training and when and where it is to be conducted shall be determined by the judicial college. A certificate of completion shall be furnished to those municipal court clerks who complete such course, and each certificate shall be made a permanent record of the minutes of the board of aldermen or city council in the municipality from which the municipal clerk is appointed.

(3) Upon the failure of any person appointed as clerk of the municipal court to file the certificate of completion as provided in subsection (2) of this section, within the first year of appointment, such person shall then not be allowed to carry out any of the duties of the office of clerk of the municipal court and shall not be entitled to compensation for the period of time during which such certificate remains unfiled.

(4) After August 1, 2015, and each year thereafter, the Administrative Office of Courts shall notify the judicial college of the name of any municipal court clerk who has not complied with the requirements of Section 9-1-46. The Mississippi Judicial College shall not provide such clerk with a certificate of completion of course work until such time that the Administrative Office of Courts has reported that the clerk is in compliance with the requirements of Section 9-1-46. Further, the Administrative Office of Courts shall report the names of all noncompliant clerks to the State Auditor and to the mayor of the municipality that employs the clerk.

SOURCES: Laws, 1992, ch. 423, § 1; Laws, 1996, ch. 309, § 1; Laws, 2014, ch. 457, § 71, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment added (4).

ATTORNEY GENERAL OPINIONS

Only clerk of municipal court, not deputy clerks, are required to complete training and education course. Coates, Nov. 3, 1993, A.G. Op. #93-0683.

The intent of the Legislature is that a municipal court clerk is required to receive at least 12 hours of training and education each year; the clerk must receive 12 hours of training within the first year of being appointed as clerk and then receive an additional 12 hours of training on an annual basis; if a clerk receives more than the required 12 hours of training in one year, up to six of those hours may be carried forward to be applied to the next year's requirement. Kossman, Mar. 9, 2001, A.G. Op. #01-0133.

Failure of a municipal court clerk to receive required training prohibits the clerk from performing any of the duties of the job and from receiving any compensation until training is completed; upon finding that the statute has not been complied with, the governing authorities should suspend the clerk without pay until the clerk complies with the requirements, and continued payments to an unqualified clerk should be reported to the State Auditor. Kossman, Mar. 9, 2001, A.G. Op. #01-0133.

§ 21-23-13. Executive officer of the court.

The marshal or chief of police of the municipality shall be the executive officer of the municipal court. He shall attend the sittings of the court in person or by duly appointed deputies, and he shall be under the direction of the municipal judge. Any police officer of the municipality may be an ex officio deputy marshal. The marshal or chief of police shall execute all process by himself or deputy and do whatever else may be required of him by the court in the line of his duty.

SOURCES: Codes, Hemingway's 1917, § 5930; 1930, § 2538; 1942, § 3374-105; Laws, 1910, ch. 202; Laws, 1950, ch. 491, § 105; Laws, 1979, ch. 401, § 8, eff from and after July 1, 1979.

Cross References — Duties of marshal or police chief generally, see § 21-21-1.

RESEARCH REFERENCES

Law Reviews. 1979 Mississippi Supreme Court Review: Civil Procedure. 50 Miss. L. J. 719, December 1979.

§ 21-23-15. Court officers shall not receive fees or costs.

Neither the municipal judge, the marshal or chief of police, any police officer, or any other officer, shall receive any fees or costs in any case in the municipal court.

SOURCES: Codes, Hemingway's 1917, § 5930; 1930, § 2538; 1942, § 3374-105; Laws, 1910, ch. 202; Laws, 1950, ch. 491, § 105; Laws, 1979, ch. 401, § 9, eff from and after July 1, 1979.

Cross References — Supplementing salaries of county judicial officers surrendering right to practice law, see § 9-9-13.

RESEARCH REFERENCES

Law Reviews. 1979 Mississippi Supreme Court Review: Civil Procedure. 50 Miss. L. J. 719, December 1979.

§ 21-23-17. Repealed.

Repealed by Laws, 2002, ch. 320, § 3, eff from and after July 1, 2002.

[Codes, 1892, § 3001; Laws, 1906, §§ 3398, 3399; Hemingway's 1917, §§ 5926-5929; Laws, 1930, §§ 2535-2537; Laws, 1942, § 3374-103; Laws, 1910, ch. 169; Laws, 1950, ch. 491, § 103; Laws, 1958, ch. 517, §§ 1, 2; Laws, 1960, ch. 424; Laws, 1979, ch. 401, § 10; Laws, 1985, ch. 363, § 2; Laws, 1995, ch. 447, § 7, eff from and after July 1, 1995.]

Editor's Note — Former § 21-23-17 provided for the waiver of trial and payment of fine for vehicular offenses without appearing in municipal court.

Cross References — For present similar provisions, see § 99-19-3.

§ 21-23-19. Disposition of parking violations.

In enforcing the penalty prescribed for violation of all laws and ordinances in regard to parking of vehicles, it shall not be necessary to name any person in a traffic ticket issued for such violation. A traffic ticket attached to the unlawfully parked vehicle shall be sufficient to require the appearance of the operator unlawfully parking such vehicle in the municipal court at the time stated in such traffic ticket. In cases where the name of the operator of an unlawfully parked vehicle is unknown, the owner of record of the unlawfully parked vehicle shall, as a matter of law, be presumed to be the operator of such vehicle and may be charged with such violation. No arrest shall be made for failure of the operator or owner to appear in response to said traffic ticket, except on affidavit and issuance of an arrest warrant. Except in cases where an arrest warrant is issued, it shall not be necessary to enter such cases on the municipal court docket nor to enter final judgment thereon in the minute book of said court. Except as otherwise provided in Section 27-19-56, Mississippi Code of 1972, in enforcing the penalty prescribed for violation of all laws and ordinances in regard to parking of vehicles, no person's driver's license shall be suspended or revoked.

SOURCES: Codes, 1942, § 3374-170; Laws, 1950, ch. 491, § 170; Laws, 1956, ch. 400; Laws, 1979, ch. 401, § 11; Laws, 1988, ch. 563, § 1; Laws, 1995, ch. 447, § 8, eff from and after July 1, 1995.

Cross References — Certain appeals to county court and rules governing further appeals, see § 11-51-81.

Penalties for motor vehicle offenses, see §§ 63-9-11, 63-9-13.

ATTORNEY GENERAL OPINIONS

A private contractor hired by a municipality to operate public parking may not issue traffic tickets or citations. A city could authorize the contractor to immobilize or tow illegally parked vehicles if requested by law enforcement. Kohnke, May 27, 2005, A.G. Op. 05-0186.

Issuance of parking tickets is an exercise of the municipality's essential power to police the conduct of its citizens and cannot be delegated to a private contractor. Kohnke, May 27, 2005, A.G. Op. 05-0186 affirmed. Kohnke, Feb. 23, 2006, A.G. Op. 05-0343.

RESEARCH REFERENCES

Law Reviews. 1979 Mississippi Supreme Court Review: Civil Procedure. 50 Miss. L. J. 719, December 1979.

§ 21-23-20. Intermittent sentences for misdemeanor convictions.

Upon conviction of any person of a misdemeanor in a municipal court of this state, the municipal court judge shall be authorized, in his discretion, to sentence such person to:

(a) A period of time in jail to be served either on weekends only;

(b) Other periods of time during the week wherein such offender may not be engaged in gainful employment; or

(c) A specified number of days in jail with a provision for the release of such offender for the purpose of engaging in gainful employment at such times as the offender is actually gainfully employed, whether self-employed or otherwise.

In addition, the court may, in its discretion, sentence any convicted person to split periods of incarceration; and the court shall not be required to order such offender to serve a sentence of imprisonment all in one period but may suspend the sentence from time to time.

SOURCES: Laws, 1985, ch. 387, eff from and after July 1, 1985.

§ 21-23-21. Applicability of chapter.

The provisions of Sections 21-23-1 through 21-23-19 shall be applicable to all municipalities of this state whether operating under a code charter, special charter, or the commission form of government, except in cases of conflict between the provisions of said sections and the provisions of the special charter of a municipality, or the law governing the commission form of government, in which cases of conflict the provisions of the special charter or the statutes relative to the commission form of government shall control. The provisions of this chapter are cumulative to other applicable laws of this state.

SOURCES: Codes, 1942, § 3374-111; Laws, 1950, ch. 491, § 111; Laws, 1979, ch. 401, § 12, eff from and after July 1, 1979.

Cross References — Various forms of municipal government, see §§ 21-3-1 et seq. (code charter); 21-5-1 et seq. (commission); 21-7-1 et seq. (council); 21-8-1 et seq. (mayor-council); and 21-9-1 et seq. (council-manager).

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

Const. 1890, §§ 80, 88, among other things providing for general laws to create and govern municipal corporations are prospective in operation and do not repeal existing municipal charters. Therefore this section recognizing the continued existence of such charters is not unconstitutional. Lum v. City of Vicksburg, 72 Miss. 590, 18 So. 476 (1895).

Its corporate authorities having formally accepted the provisions of the Code Chapter, the city of Jackson became bound thereby, and subsequent action of the authorities purporting to rescind the resolution of acceptance, though within twelve months, was ineffectual. State v. Govan, 70 Miss. 535, 12 So. 959 (1893).

Under this section declaring that after the chapter became operative, every municipality shall be governed by its provisions but that any municipality might within twelve months, "elect not to come under the provisions hereof," power was given municipalities affirmatively to accept the provisions of the chapter and be governed thereby. Ex parte Shlomberg, 70 Miss. 47, 11 So. 721 (1892).

RESEARCH REFERENCES

Law Reviews. 1979 Mississippi Supreme Court Review: Civil Procedure. 50 Miss. L. J. 719, December 1979.

§ 21-23-23. Municipal Court Collections Fund created; purpose; source of funds.

(1) There is created in the State Treasury a special fund to be known as the Municipal Court Collections Fund, which shall be administered by the Department of Revenue. The purpose of the fund shall be to provide support for salaries of municipal court personnel, for the purchase, operation and maintenance of software and equipment, for facility planning and improvement, and for other expenses incurred for the purpose of collecting fines and assessments within the municipal court system. Monies in the fund shall be expended by the Department of Revenue, upon appropriation by the Legislature. The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of:

(a) Monies appropriated by the Legislature for the purposes of funding the Municipal Court Collections Program;

(b) The interest accruing to the fund;

(c) Monies received under the provisions of Section 99-19-73;

(d) Monies received from the federal government;

(e) Donations; and

(f) Monies received from such other sources as may be provided by law.

(2) The Department of Revenue shall promulgate rules and procedures relating to the administration of the special fund and the disbursement of monies in the fund to participating municipalities. The Department of Revenue shall promulgate rules and procedures to insure that the municipal court system of a participating municipality practices proper and effective collection procedures for the collection of fines and other assessments. If a municipality uses its own employees to collect delinquent fines and other assessments owed to the municipality, then it may use monies from the fund to defray the costs associated with these collection actions. In addition, the governing authority of a participating municipality shall contract with a private attorney or private collection agent or agency to collect delinquent criminal fines and other assessments as provided in Section 21-17-1(6) in order to qualify for monies from the fund. The maximum amount that a municipality may receive from the special fund shall be an amount equal to the deposits made into the fund by that municipality, less five percent (5%) to be retained by the Department of

Revenue to defray the costs of administering the special fund. Interest earned on the special fund and any additional monies deposited into the fund shall remain in the fund and shall be used for the benefit of the Department of Revenue, at the discretion of the Commissioner of Revenue. Notwithstanding the preceding provision, the Department of Revenue is authorized to award excess monies in the Municipal Court Collections Fund as a grant to participating municipalities so long as the use of those funds are consistent with the purpose of the Municipal Court Collections Program.

SOURCES: Laws, 2014, ch. 512, § 2, eff from and after July 1, 2014.

CHAPTER 25

Fire Departments and Fire Districts

General Provisions 21-25-1
Fire Districts 21-25-21

Municipal Fire Protection Fund. [Repealed]

Interlocal Agreements Between Municipalities and Rural Water Associations 21-25-51

GENERAL PROVISIONS

Sec.	
21-25-1.	Fire marshal.
21-25-3.	Establishment and maintenance of fire departments; reimbursement of training expenses.
21-25-5.	Fire departments authorized to go outside municipal limits; liability.
21-25-7.	Hours of work for firemen limited; report to be made to state rating bureau.
21-25-9.	Medical and hospital care for injured firemen.
21-25-11.	Purchase of certain insurance for firemen; payment of premiums.

§ 21-25-1. Fire marshal.

The governing authorities of municipalities shall have the power to appoint a fire marshal, who may be the mayor, or any member of the governing authority of the municipality, or the city or town marshal. The fire marshal shall have the power to remove and keep away from the vicinity of any fire all idle and suspicious persons lurking near the same. He shall have the power to compel any person present to aid in the extinguishment of such fire or the preservation of property exposed to the danger of such fire and to aid in preventing goods from being purloined thereat. He shall also have such powers and duties as may be prescribed by ordinance.

SOURCES: Codes, 1892, § 2967; 1906, § 3352; Hemingway's 1917, § 5849; 1930, § 2428; 1942, § 3374-140; Laws, 1938, ch. 331; Laws, 1950, ch. 491, § 140, eff from and after July 1, 1950.

Cross References — Municipal authorities' power to enact fire regulations, see § 21-19-21.

Creation of fire districts and related matters, see §§ 21-25-21, 21-25-23.

Investigations of fires by state fire marshal at request of local official or any party in interest, see § 45-11-1.

State Fire Marshal, see § 45-11-1.

Correcting dangerous or hazardous inflammable conditions in buildings, see § 45-11-3.

Establishment of state fire academy, see § 45-11-7.

Fire safety measures in public buildings, see §§ 45-11-21 et seq.

Watchman being provided in certain hotels and lodging houses, see § 45-11-29.

Prohibitions against following fire apparatus and crossing fire hose, see §§ 63-3-621, 63-3-1209.

Insurer required to pay volunteer fire department for services rendered to insured property, see §§ 83-13-23, 83-13-25.

ATTORNEY GENERAL OPINIONS

A municipality may contract with a private non-profit volunteer fire department to provide fire protection services within the municipal corporate limits; the rules and regulations applicable to the department should be contained in the by-laws of that corporation, as well as in the contract for services with the municipality. Threat, Apr. 1, 2005, A.G. Op. 05-0136.

A part-time police officer would not be prohibited from also serving as chief of the volunteer fire department within the same municipality. Davis, Mar. 17, 2006, A.G. Op. 06-0010.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 135.

5A Am. Jur. Pl & Pr Forms (Rev), Civil Service, Form 1 (public employee, review of determination concerning out-of-grade duties assigned).

CJS. 62 C.J.S., Municipal Corporations §§ 698, 701-707, 708.

§ 21-25-3. Establishment and maintenance of fire departments; reimbursement of training expenses.

(1) The governing authorities of municipalities shall have the power to provide for the prevention and extinguishment of fires, to organize, establish, operate, and maintain fire and hook and ladder companies, to provide for and maintain a fire department and system, and to regulate the same. The governing authorities shall have the power to allow the fire department to attend and help to extinguish a fire outside the city limits.

(2) No fire fighter whose training expenses have been reimbursed to or paid by the political subdivision employing the fire fighter shall leave the employ of the political subdivision for not less than two (2) years after completion of the reimbursed training, unless the reimbursed expenses are paid by the new employer to the political subdivision which reimbursed or paid such expenses. The amount to be paid shall be determined on a pro rata basis based upon when the fire fighter leaves the political subdivision within the two-year period. Defined training expenses are related to minimum standards training, as established by the Mississippi Fire Personnel Minimum Standards and Certification Board which were incurred and include salary, tuition, travel expenses of the employee as well as personnel cost related to the training incurred during the employee's absence.

SOURCES: Codes, 1892, § 2967; 1906, § 3352; Hemingway's 1917, § 5849; 1930, § 2428; 1942, § 3374-140; Laws, 1938, ch. 331; Laws, 1950, ch. 491, § 140; Laws, 1995, ch. 340, § 1, eff from and after July 1, 1995.

Cross References — Creation of fire districts and related matters, see §§ 21-25-21, 21-25-23.

Firemen's and policemen's disability and relief funds, see §§ 21-29-101 et seq., 21-29-201 et seq.

Investigations of fires by state chief deputy fire marshal at request of local official or any party in interest, see § 45-11-1.

Proceedings in regard to dangerous or hazardous inflammable conditions existing in buildings, see § 45-11-3.

State fire academy as agency to conduct and coordinate training of firefighters in state, see § 45-11-7.

Uniform minimum training standards for firefighters, see § 45-11-201.

Prohibitions against following fire apparatus and crossing fire hose, see §§ 63-3-621, 63-3-1209.

Insurer required to pay volunteer fire department for services rendered to insured property, see §§ 83-13-23 and 83-13-25.

Establishment of municipal fire protection fund by state for use by municipalities to improve fire departments, see § 83-1-37.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

The city authorities in transferring an employee of the fire department from one post to another act in an executive capacity and necessarily are vested with a wide discretion in the discharge of their duties as officers of the city. Scott v. Lowe, 223 Miss. 312, 78 So. 2d 452 (1955).

The Civil Service Act limits the review of actions by the commission and the courts to whether such actions are taken in good faith and for cause. Scott v. Lowe, 223 Miss. 312, 78 So. 2d 452 (1955).

2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

In extinguishing fires, municipality is acting in governmental capacity, but in operation of its water works its actions are of proprietary nature. City of Columbus v. McIlwain, 205 Miss. 473, 38 So. 2d 921 (1949).

Municipal corporation is not responsible for destruction of property within its limits by fire which it did not set out, merely because, through negligence or other default of corporation or its employees, members of fire department failed to extinguish fire, though this failure is due to negligence in permitting fire hydrants to become defective; and it makes no difference that municipality uses same reservoirs and pipes for its fire service that it employs for distribution of public supply for domestic purposes, from which it derives profit, since the two functions are distinguishable. City of Columbus v. McIlwain, 205 Miss. 473, 38 So. 2d 921 (1949).

Laws of 1944, Chap. 208 (§§ 3825-01 to 3825-17, inclusive, Supp. to 1942 Code), did not withdraw from municipalities any of the powers conferred by this section, but, where a fireman's position has been abolished, determine only his rights. City of Laurel v. Reddoch, 200 Miss. 259, 26 So. 2d 465 (1946).

It was error to grant the remedy of mandamus against the mayor and board of aldermen of a municipality to compel them to enforce a fire prevention ordinance enacted under this section, where the ordinance was wholly incomplete with respect to the means of enforcement of its provisions. Garraway v. State ex rel. Dale, 184 Miss. 466, 184 So. 628 (1938).

Unless the statute contains some express or implied restraint, a municipality has a reasonable discretion in the choice of the means or methods for exercising the powers given it for a public purpose. American-LaFrance, Inc. v. City of Phila., 183 Miss. 207, 184 So. 620 (1938).

The language of this section is broad and comprehensive and does not justify a holding that the only power of performance is by outright purchase, and that leases are excluded. American-LaFrance, Inc. v. City of Phila., 183 Miss. 207, 184 So. 620 (1938).

Where the seller of a fire engine sought to hold a municipality liable for reasonable compensation for the use of the property because the contract of sale was invalid for failure to follow the statutory requirements in such cases, the municipality may be liable as a lessee, being entitled to credit, upon lease compensation, for all sums which it had theretofore paid, even though paid as purchase money. American-LaFrance, Inc. v. City of Phila., 183 Miss. 207, 184 So. 620 (1938).

A fire chief who was negligent in housing a fire engine in a fire barn that had lumber projecting over the opening door of the shed was acting in the discharge of a governmental duty, and a city fireman injured while driving an engine from such fire shed cannot recover from the city damages caused by the negligence of the fire chief. City of Hattiesburg v. Geigor, 118 Miss. 676, 79 So. 846 (1918) but see White v. City of Tupelo, 462 So. 2d 707 (Miss. 1984).

ATTORNEY GENERAL OPINIONS

Although county and governing board of county fire protection district may not enter into multi-state contracts or agreements, if volunteer fire departments are private, nonprofit corporations rather than publicly owned and operated departments, notwithstanding they receive substantial public funding and support via contracts for services, departments are free to enter into mutual assistance agreements with fire departments in adjacent state provided the exercise of such power is not inconsistent with the respective charters of incorporation or the fire protection service contracts with the county. Barry, July 22, 1992, A.G. Op. #92-0536.

Town of Tunica may contract with private nonprofit volunteer fire organization to provide fire protection services. Dulaney, March 20, 1998, A.G. Op. #98-0137.

A municipality may only purchase equipment, materials, supplies or provide funds for a fire protection district pursuant to an interlocal agreement with the fire protection district. Hatcher, October 30, 1998, A.G. Op. #98-0666.

A municipality has the duty to provide fire protection within its corporate limits, and if there is no fire protection district serving the area, the municipality must provide fire protection for the area. Smith, May 26, 2000, A.G. Op. #2000-0274.

There is no authority for a municipality to charge a fee of $ 500.00 to an insurance company providing fire insurance coverage to its insured in the event of a fire within the municipality to reimburse the municipality for the costs of fighting the fire. Tyner, Apr. 6, 2001, A.G. Op. #01-0198.

Subsection (3) did not apply to a firefighter who was not an employee of a political subdivision, but, instead, was the employee of a contractor. Mangum, Jr., Mar. 8, 2002, A.G. Op. #02-0091.

Fire departments have the power to verify that all reports of fires are handled appropriately and that the validity or invalidity of all reports of fires are verified. Miller, May 31, 2002, A.G. Op. #02-0280.

There is no authority for the governing authorities of a municipality to contract with residents of the municipality for additional or special police or fire protection. Tyner, May 9, 2003, A.G. Op. 03-0211.

A county may contract to provide fire protection services only, including the water supply for that contract, to a business located within the corporate limits of a municipality which is in a certificated area without the consent of the entity holding the certificate of public necessity. Nowak, Apr. 16, 2004, A.G. Op. 03-0569.

A county may contract with a municipality to provide fire protection services to a business located within the corporate limits of the municipality. Nowak, Apr. 16, 2004, A.G. Op. 03-0569.

There is no statutory requirement for a fire chief in code charter municipalities with the mayor-aldermen form of government. Davis, Oct. 29, 2004, A.G. Op. 04-0522.

A town can provide fire protection for a community 3 to 4 miles outside its corporate limits and situated in another county. If the community is located within a fire protection district, then that district would be its primary provider of fire protection. In such case, the town fire department could still assist with fire protection in said district. Ready, Oct. 7, 2005, A.G. Op. 05-0421.

RESEARCH REFERENCES

ALR. Liability of municipality of other governmental unit for failure to provide police protection. 46 A.L.R.3d 1084.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 135.

8 Am. Jur. Legal Forms 2d, Fires, § 117:20 (contract for lease of fire extinguishment equipment).

25 Am. Jur. Pl & Pr Forms (Rev), Waterworks and Water Companies, Form 1 (petition or application for order directing water company to install fire hydrants).

CJS. 62 C.J.S., Municipal Corporations § 698 et seq.

§ 21-25-5. Fire departments authorized to go outside municipal limits; liability.

The fire departments, including the apparatus and all vehicles of such departments, are hereby authorized to use the roads, highways, streets and alleys outside the corporate limits of such municipalities owning and operating such fire fighting and fire prevention equipment, for the purpose of aiding in the extinguishing and prevention of fires or in the alleviating of damages or injuries caused by tornadoes or other casualties in locations outside the corporate limits of such municipalities. For the purpose of expediting the extinguishment or prevention of fires and of aiding in the rescue of persons or preventing other damage to either persons or property in such locations outside the corporate limits of such municipalities or in cities, towns, or villages located and situated beyond the corporate limits of such municipalities owning such equipment, such fire departments are hereby extended the right of way, or priority in use, over the public roads, highways, streets and alleys of the state and counties whether such roads, highways, streets or alleys are maintained by the state, counties, cities, towns, or villages.

To further effectuate and put into force and effect the purposes of this section, such municipalities owning and operating said equipment are hereby declared free of any liability on account of injury to persons or damage to property in going to and from such locations outside the corporate limits when engaged in the extinguishing and prevention of fires or in the alleviating of damages or injuries caused by tornadoes or other casualties, it being the purpose of this section that such municipalities aiding other municipalities or residents of the State of Mississippi located outside the corporate limits of such municipalities shall be entitled to all the benefits and immunities, both from civil and criminal prosecution, as are now enjoyed by such municipalities within their own respective corporate limits. This section shall be liberally construed to effect the purposes thereof.

SOURCES: Codes, 1942, § 3470; Laws, 1942, ch. 227; Laws, 1958, ch. 510; Laws, 1964, ch. 502, eff from and after passage (approved February 25, 1964).

Cross References — Continuing disability and relief fund for firemen and policemen, see § 21-9-81.

Municipalities' entering into mutual assistance pacts, see § 21-19-23.

Reciprocal law enforcement between municipalities during civil emergencies, see §§ 21-21-31 et seq.

JUDICIAL DECISIONS

1. In general.

A fireman who was engaged in rescuing individuals from a wrecked automobile outside of the city and county in which he was employed was nevertheless a "fireman" within the meaning of § 97-3-7, which sets forth the punishment for simple assault upon a fireman acting within the scope of his duty, since the fireman was authorized under § 21-25-5 to act outside his city boundary in "aiding in the rescue of persons" and was not limited to county lines. Cagle v. State, 536 So. 2d 3 (Miss. 1988).

ATTORNEY GENERAL OPINIONS

Municipalities may provide fire protection services outside of their corporate limits. Snyder, July 3, 1997, A.G. Op. #97-0367.

A town can provide fire protection for a community 3 to 4 miles outside its corporate limits and situated in another county. If the community is located within a fire protection district, then that district would be its primary provider of fire protection. In such case, the town fire department could still assist with fire protection in said district. Ready, Oct. 7, 2005, A.G. Op. 05-0421.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 542.

8A Am. Jur. Legal Forms 2d, Fires § 117:22 (agreement with city for fire protection outside city).

§ 21-25-7. Hours of work for firemen limited; report to be made to state rating bureau.

In all municipalities of this state maintaining a paid fire department, the personnel of which department is actively and exclusively engaged in fire duty, no member of such department, exclusive of the chief officer, shall be required to remain on active duty for an entire twenty-four hours. The personnel of such fire department shall be divided into two platoons, or shifts, one to perform duty in the daytime and the other to perform duty in the nighttime, but neither platoon, or shift, shall be required to remain on active duty in any event for more than fourteen hours per day, except in cases of urgent and extreme necessity.

Each municipality coming within the provisions of this section shall immediately submit to the Mississippi state rating bureau the set-up and organization of its fire department which will be necessary in order to comply with the provisions of this section and which can be effected without employing more than one additional fireman. Such municipality shall require of said rating bureau a ruling as to whether or not such a set-up and organization of its fire department would adversely affect the present insurance rating of such municipality; if said rating bureau in answer to such request shall give a written ruling in the affirmative the municipality requesting such ruling shall be exempt from the provisions of this section.

SOURCES: Codes, 1942, § 3471; Laws, 1934, ch. 326.

§ 21-25-9. Medical and hospital care for injured firemen.

In all municipalities of this state maintaining a paid or volunteer fire department, the personnel of which department is actively and exclusively engaged in fire duty, the governing authorities of such municipality may pay out of the general fund of such municipality reasonable hospital and medical expenses for any member of said fire department on account of any occupational disease contracted or for any accident sustained by said member by reason of his service or discharge of his duty in said department. The governing authorities of such city shall be the sole judge as to whether such illness or such injury was contracted or sustained in the line of duty of any such employee, and the reasonableness of said expenses.

SOURCES: Codes, 1942, § 3494.5; Laws, 1948, ch. 420; Laws, 1956, ch. 396.

Cross References — Firemen's and policemen's disability and relief funds, see §§ 21-29-101 et seq., 21-29-201 et seq.

ATTORNEY GENERAL OPINIONS

Governing authorities may pay out of general funds reasonable hospital and medical expenses for fireman injured in discharge of his duties if such expenses were result of injuries sustained in discharge of fireman's duties; municipality may pay either part or all of reasonable hospital and medical expenses of fireman injured in line of duty. Ellis, Nov. 18, 1992, A.G. Op. #92-0874.

§ 21-25-11. Purchase of certain insurance for firemen; payment of premiums.

The governing authorities of any municipality having a population in excess of 140,000 people by virtue of the 1960 census are hereby authorized to purchase insurance coverage to protect firemen working under the direction of the municipal authorities, against any suit or claims growing out of any action of such firemen guilty of false arrest, false imprisonment, false or improper service of process, malicious prosecution or any other claim resulting from such officers' performance of official duties.

Such municipal authorities shall have the right to pay out of the general fund of such municipality any premiums which may become due on the aforesaid insurance policies.

SOURCES: Codes, 1942, § 3374-151.5; Laws, 1971, ch. 376, § 1, eff from and after passage (approved March 16, 1971).

RESEARCH REFERENCES

ALR. Immunity of prosecuting attorney or similar officer from action for false arrest or imprisonment. 79 A.L.R.3d 882.

FIRE DISTRICTS

SEC.
21-25-21. Creation.
21-25-23. Inclusion of state institution of higher learning.
21-25-25. Consolidated fire districts.
21-25-27. Levy by special assessment within district to pay for service.
21-25-29. Extension of service; abandonment.
21-25-31. Acquisition of plant and equipment.

§ 21-25-21. Creation.

The governing authorities of any municipality are hereby authorized to create, by ordinance, a fire district within or adjoining such municipality when petitioned so to do by a majority of the owners of property, either real or personal, located within such proposed fire district. After the creation of the fire district such governing authorities shall cause the ordinance creating such fire district to be published three weeks in some newspaper in such municipality, or the county in which the municipality is located, and at the next regular meeting of the governing authorities after such three weeks' publication, they shall declare such territory to be a fire district as provided by this section. Such governing authorities shall have full power to contract for laying water mains and any other pipes or connections to the water mains to be used in said fire district, and for the establishment and maintenance of fire service therein.

SOURCES: Codes, Hemingway's 1917, § 5896; 1930, § 2505; 1942, § 3614; Laws, 1914, ch. 172; Laws, 1920, ch. 318; Laws, 1950, ch. 498, § 1; Laws, 1968, ch. 556, §§ 1, 2, eff from and after passage (approved August 7, 1968).

Cross References — Municipal authorities' power to enact fire regulations, see § 21-19-21.

Establishment and maintenance of fire departments, see § 21-25-3.

State fire academy as agency to conduct and coordinate training of firefighters in state, see § 45-11-7.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 11.

8 Am. Jur. Legal Forms 2d, Fires, § 117:20 (contract for lease of fire extinguishment equipment).

§ 21-25-23. Inclusion of state institution of higher learning.

The governing authorities of any municipality are hereby authorized, when petitioned so to do by the board of trustees of state institutions of higher learning, to create, by ordinance, a fire district encompassing the area adjoining such municipality on which a part or all of a state institution of higher learning is located, after the creation of which such governing authorities and the board of trustees of state institutions of higher learning shall have full power to contract for laying of water mains and any other pipes or connections to the water mains to be used in said fire district, and for the establishment and maintenance of fire service therein. However, no such governing authority shall have the power either to promulgate or enforce any charge, rule or regulation upon said district without first having received the ratification and consent of the board of trustees of state institutions of higher learning as reflected by the minutes of said trustees.

SOURCES: Codes, Hemingway's 1917, § 5896; 1930, § 2505; 1942, § 3614; Laws, 1914, ch. 172; Laws, 1920, ch. 318; Laws, 1950, ch. 498, § 1; Laws, 1968, ch. 556, §§ 1, 2, eff from and after passage (approved August 7, 1968).

§ 21-25-25. Consolidated fire districts.

The governing authorities of any two or more municipalities may, in their discretion, contract to create a consolidated fire district, which shall consist of the whole, or a part, of the territory of such municipalities joining therein. Such contract entered into by the governing authorities of such municipalities shall embrace all of the essential terms, and shall state the amount to be contributed by each participating municipality, and the control and operation of same. An ordinance containing the contract as to control of equipment, supervision of the district, and the amount of money to be contributed by each municipality, shall be passed by the governing authorities of all participating municipalities in the same form and substance. Such ordinance shall be duly published as now required by law, and shall go into effect unless twenty per cent of the qualified electors of one of the participating municipalities shall petition against same and file said petition with the proper clerk on or before the next regular meeting of said governing authorities, to be held not less than fifteen days thereafter. If such petition be duly filed, said governing authorities may either cancel said prior ordinance or order an election on said question. Said ordinance shall go into effect immediately if a majority of the qualified electors voting in said election vote therefor; otherwise, said ordinance shall remain void and of no effect, and no like ordinance shall be passed within four years thereafter.

Such consolidated fire district shall be given a name, and the supervision of protecting said district shall be vested in the governing authorities of the municipality decided upon and stated in the ordinance creating the consolidated fire district. The governing authorities of the municipalities in a consolidated fire district created under the provisions of this section shall have the same powers and duties as the governing authorities in any other fire district.

SOURCES: Codes, 1942, § 3614.5; Laws, 1948, ch. 389; Laws, 1950, ch. 498, § 2.

Cross References — Interlocal Cooperation of Governmental Units, see §§ 17-13-1 et seq.

§ 21-25-27. Levy by special assessment within district to pay for service.

The municipal governing authorities are vested with full power to raise the levy on the property, both personal and real, by special assessment within such fire district sufficient to pay for laying such water mains, and to meet the contracted annual rental for such service. Such authorities shall have all power to enforce and collect said taxes as provided by statutes empowering municipalities to collect special assessments, and it shall be done in the same general way and may be assessed at any time and cover such length of time as the governing authorities may deem proper.

SOURCES: Codes, Hemingway's 1921 Supp. § 5896a; 1930, § 2506; 1942, § 3615; Laws, 1920, ch. 318; Laws, 1950, ch. 498, § 3.

Cross References — Levying municipal ad valorem taxes generally, see § 21-33-45.
Special assessments generally, see §§ 21-41-13 et seq.

§ 21-25-29. Extension of service; abandonment.

The said governing authorities shall have power to declare an extension of such service to any adjacent territory, within or adjoining such municipality, upon petition of a majority of the property owners in such proposed added territory. In like manner, upon petition of a majority of the property owners residing therein, such fire districts may be abandoned and discontinued by the governing authorities of the municipalities involved.

SOURCES: Codes, Hemingway's 1921 Supp. § 5896b; 1930, § 2507; 1942, § 3616; Laws, 1920, ch. 318; Laws, 1950, ch. 498, § 4.

§ 21-25-31. Acquisition of plant and equipment.

Any municipality authorized to establish a fire district may purchase or construct any waterworks plant or other plant or equipment necessary for the establishment or maintenance of fire service in such fire district. Such municipality may issue the bonds of such fire district, as now provided by law, for the purpose of securing funds to be used for the purchase or construction of such plant. Such municipality may pay or retire such bonds from taxes annually levied on the taxable property of such district, as provided for in Section 21-25-27.

SOURCES: Codes, Hemingway's 1921 Supp. § 5896c; 1930, § 2508; 1942, § 3617; Laws, 1920, ch. 318; Laws, 1950, ch. 498, § 5.

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

MUNICIPAL FIRE PROTECTION FUND [REPEALED]

Sec.
21-25-41 through 21-25-45. Repealed.

Editor's Note — Laws, 1982, ch. 351, § 20, effective July 1, 1982, provides as follows:

"SECTION 20. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under any section contained herein prior to the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective, or shall thereafter be begun; and the provisions of any section contained herein are expressly continued in full force, effect and operation for the purpose of the assessment and collection of any taxes due or accrued thereunder prior to the date on which this act becomes effective, or the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

§§ 21-25-41 through 21-25-45. Repealed.

Repealed, by Laws, 1982, ch. 351, § 19, eff from and after July 1, 1982.

§ 21-25-41. [Codes, 1942, § 3494.7; Laws, 1950, ch. 415, §§ 1-4; Laws, 1954, ch. 344, § 4 [¶ 4]; Laws, 1966, ch. 595, § 1; Laws, 1971, ch. 342, § 1; Laws, 1973, ch. 496, § 1 (a, b)].

§ 21-25-43. [Codes, 1942, § 3494.7; Laws, 1950, ch. 415, §§ 1-4; Laws, 1954, ch. 344, § 4 [¶ 4]; Laws, 1966, ch. 595, § 1; Laws, 1971, ch. 342, § 1; Laws, 1981, ch. 365, § 1].

§ 21-25-45. [Codes, 1942, § 3494.7; Laws, 1950, ch. 415, §§ 1-4; Laws, 1954, ch. 344, § 4 [¶ 4]; Laws, 1966, ch. 595, § 1; Laws, 1971, ch. 342, § 1].

Editor's Note — Former § 21-25-41 created the municipal fire protection fund, and provided for the funding of the fund.

Former § 21-25-43 provided for distribution of the fund.

Former § 21-25-45 provided for the use of distributed funds.

INTERLOCAL AGREEMENTS BETWEEN MUNICIPALITIES AND RURAL WATER ASSOCIATIONS

Sec.
21-25-51. Purpose; interlocal agreements authorized.
21-25-53. Approval by resolution; power, authority and responsibilities.
21-25-55. Contents of agreement.

21-25-57.	Bonded and floating indebtedness; appropriations; supplying goods and services.
21-25-59.	Price of newly constructed or upgraded water system.

§ 21-25-51. Purpose; interlocal agreements authorized.

(1) It is the purpose of Sections 21-25-51 through 21-25-59 to permit the governing authorities of any municipality and a rural water association operating within the corporate limits of the municipality to make the most efficient use of their powers in upgrading their respective water systems for the purpose of improving local fire protection by enabling them to cooperate and to contract with each other on a basis of mutual advantage and thereby provide services and facilities in a manner that will accord best with geographic, economic, population and other factors influencing the needs and development of the fire protection of local communities.

(2) The governing authorities of any municipality may enter into an interlocal agreement with any rural water association operating within the corporate limits of the municipality for the purpose of constructing, new construction or upgrading the water system of the municipality or the water association, or both, for the purpose of improving the fire protection of the municipality.

SOURCES: Laws, 1998, ch. 319, § 1, eff from and after passage (approved March 12, 1998).

ATTORNEY GENERAL OPINIONS

A municipality may enter into a contract with a water association under which the water association reads the meters of the residents who receive municipal sewer services, sends bills to these customers, collects the fees for sewer services, and provides cut-off services for customers who fail to pay sewer fees; further, a town may require customers of the water association to give their consent to have their meters read by the town as a condition of receiving sewer services provided by the town. Hatcher, October 9, 1998, A.G. Op. #98-0606.

There is no authority for a county to provide sewer services or to collect fees for sewer services or to assess property for sewer services or other utility services as a special assessment; therefore, there is no authority for a municipality to enter into an interlocal agreement with the board of supervisors and tax assessor and collector of the county to collect fees for sewer services as part of the county or municipal ad valorem taxes of nonresidents and residents of the town who receive sewer services and to sell property of sewer service customers who are delinquent in their accounts. Hatcher, October 9, 1998, A.G. Op. #98-0606.

A municipality may enter into an interlocal agreement with a rural water association, as contemplated by Section 21-25-51, to upgrade their respective water systems for the purpose of improving local fire protection. Tyner, Oct. 20, 2006, A.G. Op. 06-0501.

§ 21-25-53. Approval by resolution; power, authority and responsibilities.

(1) No interlocal agreement made under Sections 21-25-51 through 21-25-59 shall be entered into by any municipality or rural water association without the approval by resolution on the minutes of the governing authorities of the municipality and the rural water association.

(2) No power, authority and responsibility may be exercised under Sections 21-25-51 through 21-25-59 by the governing authorities of any municipality or rural water association which it would not have authority to exercise otherwise pursuant to the law controlling such municipality or association.

(3) Any power, authority or responsibility exercised or capable of being exercised by the governing authorities of any municipality of this state may be exercised and carried out jointly with the governing authorities of any rural water association.

SOURCES: Laws, 1998, ch. 319, § 2, eff from and after passage (approved March 12, 1998).

Cross References — Interlocal Cooperation of Governmental Units, see § 17-13-1 et seq.

Powers of various forms of municipal government, see §§ 21-3-1 et seq. (code charter); 21-5-1 et seq. (commission); 21-7-1 et seq. (council); 21-8-1 et seq. (mayor-council); and 21-9-1 et seq. (council-manager).

Municipality's general powers, see §§ 21-17-1 et seq.

§ 21-25-55. Contents of agreement.

Any agreement made under the provisions of Sections 21-25-51 through 21-25-59 shall specify the following:

(a) Its duration.

(b) Its purpose or purposes.

(c) The precise organization, composition, nature and powers of any separate legal or administrative entity created thereby; the specific citation of statutory authority vested in each of the governing authorities of the municipality and rural water association which are to be a party to the agreement.

(d) The manner of financing, staffing and supplying the joint or cooperative undertaking and of establishing and maintaining a budget therefore; provided, that the treasurer and the disbursing officer of either the municipality or the association, or both, shall be designated in the agreement to receive, disburse and account for all funds of the joint undertaking as a part of the duties of the officer or officers.

(e) The permissible method or methods to be employed in accomplishing the partial or complete termination or amendment of the agreement and for disposing of property upon such partial or complete termination or amendment.

(f) The provision for administration, through a joint board or other appropriate means, of the joint or cooperative undertaking in the event that the agreement does not or may not establish a separate administrative body or legal entity to conduct the joint or cooperative undertaking. In the case of a joint board, both the governing authorities of the municipality and the rural water association shall be represented.

(g) The manner of acquiring, holding and disposing of real and personal property used in the joint or cooperative undertaking in the event that the agreement does not or may not establish a separate administrative body or legal entity to conduct the joint or cooperative undertaking.

(h) Any other necessary and proper matters.

SOURCES: Laws, 1998, ch. 319, § 3, eff from and after passage (approved March 12, 1998).

§ 21-25-57. Bonded and floating indebtedness; appropriations; supplying goods and services.

The governing authorities of any municipality entering into an interlocal agreement with a rural water association operating within the corporate limits of the municipality pursuant to Sections 21-25-51 through 21-25-59 may incur bonded and floating indebtedness, including general obligation indebtedness as authorized by Sections 21-33-301 through 21-33-329 and may appropriate funds for the purpose and in the manner prescribed by law without regard to whether the activities and improvements authorized under Section 21-25-51 to be financed by such debt or appropriation are within or without the corporate limits of the municipality. The governing authorities of the municipality may sell, lease, grant or otherwise supply goods and services to the rural water association which is a party to the interlocal agreement or the administrative body or legal entity created to operate the joint or cooperative undertaking.

SOURCES: Laws, 1998, ch. 319, § 4, eff from and after passage (approved March 12, 1998).

§ 21-25-59. Price of newly constructed or upgraded water system.

After a water system has been constructed or upgraded pursuant to the provisions of Sections 21-25-51 through 21-25-59, the municipality which reimbursed or paid a rural water system for the cost of such construction or upgrading shall not be charged with the costs of such construction or upgrade upon its purchase of the water system. The price of such newly constructed or upgraded water system shall be reduced by an amount equal to the costs paid by the municipality to the rural water system for such construction or upgrading of the water system.

SOURCES: Laws, 1998, ch. 319, § 5, eff from and after passage (approved March 12, 1998).

CHAPTER 27

Public Utilities and Transportation

General Provisions 21-27-1
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GENERAL PROVISIONS

Sec.
21-27-1. No franchise or right to be exclusive, without compensation, or longer than 25 years.
21-27-3. Poles, posts and wires.
21-27-5. Pipes, conduits and pipe lines.
21-27-7. Waterworks.
21-27-9. Testing of water, electric and gas meters; authority to prosecute persons for tampering with meters.

§ 21-27-1. No franchise or right to be exclusive, without compensation, or longer than 25 years.

No municipality shall have the power to grant to any person, firm or corporation any exclusive franchise or any exclusive right to use or occupy the streets, highways, bridges, or public places in such municipality for any purpose. No municipality shall grant, renew, or extend any such franchise, privilege or right, without compensation or for any longer period than twenty-five years.

The provisions of this section shall be applicable to all municipalities of this state, whether operating under a code charter, special charter, or the commission form of government, except in cases of conflict between the provisions of this section and the provisions of the special charter of a municipality, or the law governing the commission form of government, in which cases of conflict the provisions of the special charter or the statutes relative to the commission form of government shall control.

SOURCES: Codes, Hemingway's 1917, § 6056; 1930, § 2644; 1942, §§ 3374-85, 3374-111; Laws, 1912, ch. 120; Laws, 1950, ch. 491, § 85, 111, eff from and after July 1, 1950.

Cross References — How franchise granted, see § 21-13-3.

"Municipality" redefined in connection with motor vehicle transportation system, see § 21-27-11.

JUDICIAL DECISIONS

1. In general.

The power given municipalities to grant utility franchises and the right to use their streets and public places are subject to legislative control. Delta Elec. Power Ass'n v. Mississippi Power & Light Co., 250 Miss. 482, 149 So. 2d 504 (1963), appeal dismissed, cert. denied, 375 U.S. 77, 84 S. Ct. 196, 11 L. Ed. 2d 142 (1963), reh'g denied, 375 U.S. 981, 84 S. Ct. 478, 11 L. Ed. 2d 428 (1964).

A nonexclusive franchise of a common carrier for passengers for hire is a valuable property right, and the carrier is entitled to relief by way of an injunction against a threatened or actual injury to his property rights through illegal competition of another common carrier of passengers for hire. Payne v. Jackson City Lines, 220 Miss. 180, 70 So. 2d 520 (1954).

A commercial carrier of passengers for hire in a municipality must obtain a franchise before the carrier can operate for those purposes. Payne v. Jackson City Lines, 220 Miss. 180, 70 So. 2d 520 (1954).

ATTORNEY GENERAL OPINIONS

Provisions of Miss. Code Section 21-27-1 do not preempt municipal home rule authority to grant nonexclusive franchises and to regulate cable television services; further, no other state law implies legislative intent to prohibit municipalities from exercising franchising authority over other activities, such as cable television services, that are otherwise appropriate subjects of governmental regulation. Mitchell, Apr. 23, 1993, A.G. Op. #93-0007.

A city may enter into a lease purchase agreement in which it leases and eventually purchases all or part of a private utility system. However, the current board of aldermen of the city may not bind their successors in office by a lease purchase contract. Campbell, Sept. 26, 2003, A.G. Op. 03-0491.

RESEARCH REFERENCES

ALR. Validity of statute, ordinance, or regulation forbidding granting of exclusive rights or franchises to, or abolishing existing exclusive rights secured pursuant to outstanding permits for, taxicab or hack stands. 8 A.L.R.2d 574.

Am Jur. 36 Am. Jur. 2d, Franchises from Public Entities §§ 1 et seq.

8B Am. Jur. Legal Forms 2d, Franchises from Public Entities §§ 124:23 et seq. (grant and acceptance of franchise).

8B Am. Jur. Legal Forms 2d, Franchises from Public Entities §§ 124:47 et seq. (description and conditions of particular franchises).

8B Am. Jur. Legal Forms 2d, Franchises from Public Entities §§ 124:2631 et seq. (optional provisions of franchise).

12 Am. Jur. Pl & Pr Forms (Rev), Franchises, Forms 1, 2 (franchise, recovering earnings as compensation for exercise, or liquidated damages for violation).

12 Am. Jur. Pl & Pr Forms (Rev), Franchises, Forms 21-23 (complaint by utility companies to enjoin unauthorized competition).

CJS. 37 C.J.S., Franchises §§ 9, 10 et seq.

§ 21-27-3. Poles, posts and wires.

The governing authorities of municipalities shall have the power to grant the right for the erection of telegraph, electric light, or telephone poles, posts and wires along and upon any of the streets, alleys, or ways of the municipality, and change, modify, and regulate the same. However, such privilege shall not be exclusive, and no such privilege shall be granted for a longer term than twenty-five years.

SOURCES: Codes, 1892, § 2932; 1906, § 3323; Hemingway's 1917, § 5820; 1930, § 2400; 1942, § 3374-119; Laws, 1950, ch. 491, § 119, eff from and after July 1, 1950.

Cross References — Authorization for erection and maintenance of utility poles and lines, see § 11-27-43.

Exercise of eminent domain by municipality, see § 21-37-47.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

Certificate of public convenience and necessity issued by Public Service Commission (PSC) to utility grants exclusive right to operate in designated area, so long as utility is capable of providing adequate service to customers in area covered by certificate. City of Oxford v. Northeast Miss. Elec. Power Ass'n, 704 So. 2d 59 (Miss. 1997), reh'g denied, 702 So. 2d 133 (Miss. 1997).

A public utility part of whose certificated area has been annexed to a city may continue to serve the annexed area without obtaining a franchise from the city; but subject to the right of the city to regulate reasonably the manner in which its lines and appliances are constructed and maintained. Delta Elec. Power Ass'n v. Mississippi Power & Light Co., 250 Miss. 482, 149 So. 2d 504 (1963), appeal dismissed, cert. denied, 375 U.S. 77, 84 S. Ct. 196, 11 L. Ed. 2d 142 (1963), reh'g denied, 375 U.S. 981, 84 S. Ct. 478, 11 L. Ed. 2d 428 (1964); Capital Elec. Power Ass'n v. Mississippi Power & Light Co., 250 Miss. 514, 150 So. 2d 534 (1963), appeal dismissed, cert. denied, 375 U.S. 77, 84 S. Ct. 196, 11 L. Ed. 2d 142 (1963), reh'g denied, 375 U.S. 981, 84 S. Ct. 478, 11 L. Ed. 2d 428 (1964).

2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

These provisions preclude municipalities from granting an exclusive franchise. Mississippi Power Co. v. City of Aberdeen, 95 F.2d 990 (5th Cir. 1938).

The permission of the municipal authorities to a telephone company to cut trees on the line between the sidewalks and the street in the municipality does not empower the company to disregard the rights of an abutting owner. Cumberland Tel. & Tel. Co. v. Cassedy, 78 Miss. 666, 29 So. 762 (1901).

That such act was done in the absence of the plaintiff, permission having been previously asked and refused, is a fraud on the plaintiff and entitles him to punitive damages as if done in his presence. Cumberland Tel. & Tel. Co. v. Cassedy, 78 Miss. 666, 29 So. 762 (1901).

The power of a municipality over its streets, under an ordinary charter, is subject to legislative control, and hence an ordinance exacting rents from a telegraph company for the use of streets for its poles is void. Hodges v. Western Union Tel. Co., 72 Miss. 910, 18 So. 84 (1895).

ATTORNEY GENERAL OPINIONS

Municipal "franchise" authority to grant permission and to regulate erection of telegraph, electric light, or telephone poles, posts and wires along public rights-of-way is regulated by Miss. Code Section 21-27-3. Mitchell, Apr. 23, 1993, A.G. Op. #93-0007.

Subject to any contractual agreements that may exist between a municipality and a public utility, the municipality has the power to grant the right to erect poles and string wires on public rights-of-way and is empowered to govern and regulate the manner of such use, including, without limitation, requiring that all such lines be placed underground. Fortier, Jan. 25, 2000, A.G. Op. #99-0725.

A municipality may install water meters which are owned by the municipality on private property or on municipal rights-of-way, and the municipality may require consumers of the water services to give their consent to have their meters read as a condition of receiving water services; a municipality may also require consumers of water services to grant to the municipality an easement for ingress and egress for the purpose of reading water meters. Jalanivich, Mar. 15, 2002, A.G. Op. #02-0113.

A municipality may require that electric light poles be constructed of steel as opposed to wood. No provision in state law is found which would require, or which authorizes, a municipality to pay for any additional costs incurred by a utility to accommodate such requirements. Sorrell, Mar. 9, 2004, A.G. Op. 04-0099.

Requiring "enhancements" to electric service provided by public utilities, such as steel versus wood poles and underground versus above-ground lines, constitutes a form of ratemaking which is regulated by the Mississippi Public Service Commission. Although a municipality may require lines to be located underground or to be constructed with certain materials, same is subject to the rate schedules approved by MPSC. Sorrell, Mar. 9, 2004, A.G. Op. 04-0099 modified.

If municipal governing authorities determine that a utility is an "entire waterworks system", then its acquisition by eminent domain would be a "purchase" requiring an election by the voters under Section 21-27-3 (1972). Helmert, Oct. 28, 2005, A.G. Op. 05-0518.

RESEARCH REFERENCES

ALR. Electric line in highway as additional servitude. 58 A.L.R.2d 525.

Placement, maintenance, or design of standing utility pole as affecting private utility's liability for personal injury resulting from vehicle's collision with pole within or beside highway. 51 A.L.R.4th 602.

Liability of owner of wires, poles, or structures struck by aircraft for resulting injury or damage. 49 A.L.R.5th 659.

Am Jur. 26 Am. Jur. 2d, Eminent Domain § 61.

20A Am. Jur. Pl & Pr Forms (Rev), Public Utilities, Form 137 (notice of motion by power company to compel municipality to grant permit to erect transmission lines).

11 Am. Jur. Trials 189, Condemnation of Urban Property.

CJS. 29A C.J.S., Eminent Domain § 45.

§ 21-27-5. Pipes, conduits and pipe lines.

The governing authorities of municipalities shall have the power to grant to any person, corporation, or association, on such terms and conditions as the governing authorities may prescribe, the use of the streets, alleys and other public grounds for the purpose of laying, constructing, repairing and maintaining gas, water, sewer, or steam pipes, or conduits for electric light, telegraph and telephone lines, and pipe lines for the purpose of transporting crude oil, crude petroleum, kerosene, gasoline, and other commodities transportable by pipe line. However, such franchise, right-of-way or privilege of any character whatsoever shall not be granted for a longer period than twenty-five years, and such privilege shall not be exclusive.

SOURCES: Codes, 1892, § 2933; 1906, § 3324; Hemingway's 1917, § 5821; 1930, § 2401; 1942, § 3374-120; Laws, 1950, ch. 491, § 120, eff from and after July 1, 1950.

Cross References — Exercise of eminent domain in connection with pipelines, see § 11-27-47.

Exercise of eminent domain by municipality, see § 21-37-47.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

Certificate of public convenience and necessity issued by Public Service Commission (PSC) to utility grants exclusive right to operate in designated area, so long as utility is capable of providing adequate service to customers in area covered by certificate. City of Oxford v. Northeast Miss. Elec. Power Ass'n, 704 So. 2d 59 (Miss. 1997), reh'g denied, 702 So. 2d 133 (Miss. 1997).

A public utility, part of whose certificated area has been annexed to a city, may continue to serve the annexed area without obtaining a franchise from the city; but subject to the right of the city to regulate reasonably the manner in which its lines and appliances are constructed and maintained. Delta Elec. Power Ass'n v. Mississippi Power & Light Co., 250 Miss. 482, 149 So. 2d 504 (1963), appeal dismissed, cert. denied, 375 U.S. 77, 84 S. Ct. 196, 11 L. Ed. 2d 142 (1963), reh'g denied, 375 U.S. 981, 84 S. Ct. 478, 11 L. Ed. 2d 428 (1964); Capital Elec. Power Ass'n v. Mississippi Power & Light Co., 250 Miss. 514, 150 So. 2d 534 (1963), appeal dismissed, cert. denied, 375 U.S. 77, 84 S. Ct. 196, 11 L. Ed. 2d 142 (1963), reh'g denied, 375 U.S. 981, 84 S. Ct. 478, 11 L. Ed. 2d 428 (1964).

The power given municipalities to grant utility franchises and the right to use their streets and public places are subject to legislative control. Delta Elec. Power Ass'n v. Mississippi Power & Light Co., 250 Miss. 482, 149 So. 2d 504 (1963), appeal dismissed, cert. denied, 375 U.S. 77, 84 S. Ct. 196, 11 L. Ed. 2d 142 (1963), reh'g denied, 375 U.S. 981, 84 S. Ct. 478, 11 L. Ed. 2d 428 (1964).

A power company may, with the consent of the municipal authorities, place a transmission line upon property purchased for a park, not interfering with its use as such. City Council v. Thomas, 241 Miss. 633, 131 So. 2d 659 (1961).

2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

These provisions preclude municipalities from granting an exclusive franchise. Mississippi Power Co. v. City of Aberdeen, 95 F.2d 990 (5th Cir. 1938).

That another company had laid pipe line over same territory did not prevent respondent from condemning land for pipe line, public policy of State, as evidenced by anti-trust statutes and statutes prohibiting municipalities from granting exclusive franchise, being to encourage competition. Gandy v. Public Serv. Corp., 163 Miss. 187, 140 So. 687 (1932).

ATTORNEY GENERAL OPINIONS

Municipal "franchise" authority to grant permission and to regulate erection of pipes, pipe lines and other conduits along public rights-of-way is regulated by Miss. Code Section 21-27-5. Mitchell, Apr. 23, 1993, A.G. Op. #93-0007.

The governing authorities of the City of Olive Branch may grant a franchise to the area electric power association to construct and maintain utility poles, wires and other facilities on a strip of land near the fire station on such terms and conditions as the governing authorities may elect. Snyder, August 27, 1999, A.G. Op. #99-0402.

RESEARCH REFERENCES

Am Jur. 26 Am. Jur. 2d, Eminent Domain §§ 15, 48, 49.

61 Am. Jur. 2d, Pipelines §§ 21 et seq.

7A Am. Jur. Legal Forms 2d, Easements and Licenses in Real Property § 94:54 (easement for construction and maintenance of gas pipeline).

9 Am. Jur. Pl & Pr Forms (Rev), Drains and Drainage Districts, Forms 1 et seq. (drainage district, establishment).

9 Am. Jur. Pl & Pr Forms (Rev), Drains and Drainage Districts, Forms 102 et seq. (drainage or sewerage services, liability of agency).

8 Am. Jur. Trials 57, Condemnation of Rural Property for Highway Purposes.

11 Am. Jur. Trials 189, Condemnation of Urban Property.

CJS. 29A C.J.S., Eminent Domain §§ 34, 41, 44, 45.

§ 21-27-7. Waterworks.

The governing authorities of municipalities shall have the power to erect, purchase, maintain and operate waterworks, and to regulate the same, to prescribe the rates at which water shall be supplied to the inhabitants, and to acquire by purchase, donation or condemnation, in the name of the municipality, suitable grounds, within or without the corporate limits, upon which to erect waterworks, and also the right-of-way to and from such works and the right-of-way for laying water pipes within the corporate limits, and from such waterworks to the municipality, and to extend such right-of-way from time to time. The governing authorities shall have the power to contract with any person for the maintenance and operation of waterworks. Said authorities shall have the power to contract with any person for the erection and maintenance of waterworks for a term not exceeding twenty-five (25) years, fixing water rates in the contract subject to municipal regulations. A contract for the erection or purchase of waterworks shall not, however, be entered into until submitted to a vote of the qualified electors and approved by a majority of those voting. A contract for maintenance under which the person who will perform such maintenance is wholly or partially responsible for fixing water rates shall not be entered into until submitted to a vote of the qualified electors and approved by a majority of those voting. It shall be unlawful for any municipally owned waterworks to supply water free of charge, or in any amount less than the fixed charges, to any person, firm or corporation, except as is expressly authorized by law.

SOURCES: Codes, 1892, § 2948; 1906, § 3339; Hemingway's 1917, § 5836; 1930, § 2415; 1942, § 3374-130; Laws, 1950, ch. 491, § 130; Laws, 1976, ch. 458; Laws, 1987, ch. 525, § 1, eff from and after October 20, 1987 (the date the United States Attorney General interposed no objections to this amendment).

Cross References — Authority for counties paying for laying water mains for municipal systems, see § 19-5-29.

Testing of water meters, see § 21-27-9.
Exercise of eminent domain by municipality, see § 21-37-47.

JUDICIAL DECISIONS

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former Law.

11. In general.
12. Liabilities of municipality or water company.
13. Rights and duties of consumers.
14. Denial or discontinuance of service.
15. Contracts with, and privileges granted, water companies.
16. Rates.
17. —Rates or charges in case of delinquency in payment.

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former Law.

11. In general.

In the exercise of the powers granted by statute with respect to constructing and maintaining waterworks and sewerage systems, the municipality may employ civil engineers to make the necessary surveys and prepare the necessary plans and specifications, and to supervise the work after the awarding of contracts; it may employ attorneys to prepare the necessary orders and resolutions, to supervise the enactment of other necessary legal proceedings for the issuance and sale of bonds, and to give legal opinions as to the validity of the bonds; and it may pay for such engineering and legal services and other incidental expenses connected with the issuance and sale of the bonds and the construction of such public works out of the proceeds of the sale of the bonds, or perhaps out of the general fund of the municipality. Mayor & Bd. of Aldermen v. Engle, 211 Miss. 380, 51 So. 2d 564 (1951).

Under the statute regulating the issuance of bonds by the state or its political subdivisions (Law of 1946, ch. 325, § 4357-01), there is no room for the services of an underwriter in the sale of municipal bonds, and the governing authorities of a municipality have no power to enter into a contract of any kind for the payment of an underwriter's fee or commission to investment bankers for an underwriter's guarantee of the sale of municipal bonds, or for the purpose of procuring a purchaser for such bonds prior to the advertisement for and receipt of bids, or to enter into a pre-election conditional sales contract for the sale of such bonds. Mayor & Bd. of Aldermen v. Engle, 211 Miss. 380, 51 So. 2d 564 (1951).

The governing authorities of a municipality have no right to delegate to a group of investment bankers the power and authority to procure for the municipality the necessary and legal engineering services which may be required to enable the municipality to issue and sell its revenue bonds and to construct the public utility improvements contemplated. Mayor & Bd. of Aldermen v. Engle, 211 Miss. 380, 51 So. 2d 564 (1951).

Decision by city that particular site which it seeks to condemn is best adapted to its proposed public use as site for water tower is legislative and is not reviewable by courts; and city is not to be restricted in its choice between two or more available sites. City of Natchez v. Henderson, 207 Miss. 14, 41 So. 2d 41 (1949).

Municipal corporation is not responsible for destruction of property within its limits by fire which it did not set out, merely because, through negligence or other default of corporation or its employees, members or fire department failed to extinguish fire, though this failure is due to negligence in permitting fire hydrants to become defective; and it makes no difference that municipality uses same reservoirs and pipes for its fire service that it employs for distribution of public supply for domestic purposes, from which it derives profit, since the two functions are distinguishable. City of Columbus v. McIlwain, 205 Miss. 473, 38 So. 2d 921 (1949).

In extinguishing fires, municipality is acting in governmental capacity, but in operation of its waterworks its actions are of proprietary nature. City of Columbus v. McIlwain, 205 Miss. 473, 38 So. 2d 921 (1949).

Decision of municipal authorities as to extension of municipal water system to new territory is final in absence of abuse of discretion. City of Greenwood v. Provine, 143 Miss. 42, 108 So. 284, 45 A.L.R. 824 (1926).

A supervising and advising engineer is entitled to compensation for installing a waterworks system embracing a pump guaranteed by such engineer to do the work, where the failure of the pump to do the work was due to the town's own fault. Town of Woodville v. Jenks, 104 Miss. 184, 61 So. 172 (1913).

However, without statutory authority a municipality owning and operating a waterworks plant has no authority to supply water outside the limits of the municipality. Steitenroth v. City of Jackson, 99 Miss. 354, 54 So. 955 (1911).

12. Liabilities of municipality or water company.

A city operating waterworks plant and furnishing water to its citizens and controlling the cock at the junction of service pipe and the main pipe which let the water on and off is required to remove an obstruction therein within a reasonable time, and if it fails to do so it will be liable for injuries sustained by reason of insufficient water supply. City of Jackson v. Anderson, 97 Miss. 1, 51 So. 896 (1910).

It is not actionable negligence for a water company obligated to keep hydrants in repair, with the right to cut off the water flow to make repairs, and which cut off the water supply for thirty minutes to repair a hydrant, without notifying a patron using a gas heater which was highly dangerous if left burning after the water supply ceased and damage was caused by fire caused by patron lighting the gas while the water was cut off. Brame v. Light, Heat & Water Co., 95 Miss. 26, 48 So. 728, 20 Am. Ann. Cas. 1293 (1909).

A city by ordinance has the right to prohibit a person or corporation operating waterworks system in the city from permitting the pipes connected with such system becoming out of repair for more than two days in succession at the same time. Crumpler v. City of Vicksburg, 89 Miss. 214, 42 So. 673, 10 Am. Ann. Cas. 1098 (1907).

However, a corporation which contracts to supply a city and its inhabitants with water and to furnish hydrants at a designated pressure for use by the fire department is not liable to the owner for the destruction of a house by fire originating in an adjacent tenement which the firemen were unable to extinguish before it reached and consumed the house for want of such pressure on the water. Wilkinson v. Light, Heat & Water Co., 78 Miss. 389, 28 So. 877 (1900).

13. Rights and duties of consumers.

Where there is no ordinance requiring or permitting householders to repair service pipe located in the street, a householder has neither right nor authority to repair such service pipe connecting his premises with the city water main located in the street, but the duty of making such repairs in the street devolves on the water company or the city furnishing the water. Van Norman v. Meridian Waterworks Co., 102 Miss. 736, 59 So. 883 (1912).

The property owner is required to keep in repair the water service and pipes that are on his property, but the city is required to keep in repair and render service pipes in the street which are adequate to all reasonable demand and to keep the main pipe in proper repair in order to furnish sufficient water supply to its patrons. Brown v. City of Meridian, 102 Miss. 384, 59 So. 795 (1912).

14. Denial or discontinuance of service.

A verdict for $500 against a city for removing a water hydrant in plaintiff's yard, although she had another hydrant in her kitchen, was excessive; The discomfort, inconvenience and annoyance suffered might be considered in the estimation of damages. Town of Indianola v. Woods, 118 Miss. 738, 80 So. 7 (1918).

It was error for the court to give a peremptory instruction for the city where the proof showed that the city's collector of water rental exceeded the scope of his authority in cutting off the water where the suit was for damages for cutting off the water. Woods v. Town of Indianola, 114 Miss. 722, 75 So. 549 (1917).

Notwithstanding the failure of the landlord to pay rental, a lessee of part of a room is entitled to service if he applies in good faith. Ginnings v. Meridian Waterworks Co., 100 Miss. 507, 56 So. 450, Am. Ann. Cas. 1914A,540 (1911).

A municipality owning and operating a waterworks plant cannot withhold from a tenant who tenders payment therefor merely for the reason that the tenant who previously occupied the premises had failed to pay for water furnished him thereat; A rule or regulation authorizing such conduct is unreasonable and void. Burke v. City of Water Valley, 87 Miss. 732, 40 So. 820, 112 Am. St. R. 468 (1906).

15. Contracts with, and privileges granted, water companies.

A city does not abuse its discretion by preparing the construction of a waterworks plant four years before the expiration of the franchise of a water company and a court of equity will not enjoin the issuance of bonds authorized for the purpose. Griffith v. City of Vicksburg, 102 Miss. 1, 58 So. 781 (1912).

The granting to a waterworks company the exclusive right to conduct a waterworks plant in the city does not preclude the city from permitting a railroad to lay pipes in the streets so as to obtain water for its own consumption from another source. Vicksburg Waterworks Co. v. Yazoo & Miss. V. Ry., 96 Miss. 807, 51 So. 915 (1910).

The exclusive privilege granted by a city to construct a waterworks plant in the city and to use the streets for that purpose is the granting of a franchise. Adams v. Samuel R. Bullock & Co., 94 Miss. 27, 47 So. 527, 19 Am. Ann. Cas. 165 (1908).

A contract made by the authorities of a municipality with the water company for supplying the city with water for a period of twenty years, is within the powers conferred on them by an act of the legislature authorizing them to contract with a reliable corporation for supplying the city with water from year to year. Light, Heat & Water Co. v. City of Jackson, 73 Miss. 598, 19 So. 771 (1895).

While equity will not rescind a continuing contract for an occasional and immaterial breach not going to the substance of the contract, yet where a water company has failed to comply with its contract to supply a city with water in such force and quantity as to afford first-class protection against fire, the remedy of rescission is peculiarly appropriate on occasions of this character. Light, Heat & Water Co. v. City of Jackson, 73 Miss. 598, 19 So. 771 (1895).

A stipulation in a contract that a water company shall forfeit ten dollars per week for each week that a hydrant remains out of repair is in the nature of a penalty for the occasional temporary neglect and not liquidated damages for an entire breach of the contract. Light, Heat & Water Co. v. City of Jackson, 73 Miss. 598, 19 So. 771 (1895).

16. Rates.

A water system using the streets for mains and which occupied them at the time the municipality was incorporated and having no contract with the municipality constitutes a public utility and rates for water furnished to customer must not be discriminatory. Caston v. Hutson, 139 Miss. 890, 104 So. 698 (1925).

Rates fixed by municipal ordinance cannot be enjoined without an allegation that they are unreasonable and an offer to pay a reasonable rate. Bell v. Kaye, 127 Miss. 165, 89 So. 910 (1921).

Where the consumer is not misled by the neglect of the waterworks company in not having a correct meter to properly register the amount of water used by a customer it would not be estopped to collect charges for the amount of water actually used. Vicksburg Waterworks Co. v. Yazoo & Miss. V. Ry., 102 Miss. 504, 59 So. 825 (1912).

17. —Rates or charges in case of delinquency in payment.

But a regulation of a city requiring the payment of one dollar in addition to delinquent water rent because of such delinquency is unreasonable and void. Carmichael v. City of Greenville, 112 Miss. 426, 73 So. 278 (1916).

A city may adopt reasonable regulations to enforce payment of water rent as by shutting off water until payment, but a city's contract to furnish water on certain premises is a covenant running with the land and the contract is not terminated by the landlord's delinquency in paying water rent. Carmichael v. City of Greenville, 112 Miss. 426, 73 So. 278 (1916).

A regulation of the waterworks company requiring a customer to pay his water bill within a certain time after it was due or in default of payment at said time to pay 10% thereon additional does not violate the statute prohibiting a greater rate of interest than 10%. Ford v. Vicksburg Waterworks Co., 102 Miss. 717, 59 So. 880 (1912).

ATTORNEY GENERAL OPINIONS

Municipalities are clearly authorized to enter into contracts with private companies to provide services relating to operation and maintenance of waterworks systems owned by municipality; there also appears to be no prohibition to concept of contracting with private firm to provide professional services associated with operation and management of wastewater system. Jones, Feb. 22, 1990, A.G. Op. #90-0116.

Municipality may fix water rates as flat monthly rates for all consumers residing in the municipality and service area or municipality may charge all consumers a certain amount per gallon of water used, but a public utility cannot discriminate in setting its rates among similarly situated users for the same type of service. Taylor, Jan. 16, 1992, A.G. Op. #92-0016.

Town may install meters on main water line owned by private individual which serves customers in county. Jones, Nov. 25, 1992, A.G. Op. #92-0850.

Municipality may contract with private corporation to maintain and operate municipal water and sewer system for specified amount to be paid monthly to corporation with profits generated by system accruing to city pursuant to Miss. Code Section 21-27-7. Horan, Feb. 12, 1993, A.G. Op. #92-0961.

Municipal "franchise" authority to grant permission and to regulate erection of waterworks along public rights-of-way is regulated by Miss. Code Section 21-27-7. Mitchell, Apr. 23, 1993, A.G. Op. #93-0007.

While municipality is prohibited from providing free water service to an individual, municipal governing authorities, upon a proper finding of fact that citizen was overcharged for his water service, would be authorized to allow appropriate credit toward the payment of future water bills. Baker, March 17, 1994, A.G. Op. #94-0111.

The statute mandates an election when a municipality contracts for the erection and purchase of an entire waterworks system to initially provide water service in the municipality and does not mandate an election when a municipality contracts to acquire an adjoining rural water association to extend the area where the city provides water service. Phillips, April 3, 1998, A.G. Op. #98-0128.

The election requirements of the statute did not apply to the pending annexation by a city of certain territory within a utility district. Kihyet, Sr., June 30, 2000, A.G. Op. #2000-0336.

The statute is sufficient to permit municipal governing authorities to contract with a private company to operate and maintain a water system, including making repairs, replacements, and extensions to the system. Snyder, Nov. 27, 2000, A.G. Op. #2000-0673.

Municipal governing authorities may contract with a private nonprofit water association to maintain and make repairs to the municipal water system; municipal governing authorities may contract with the water association for routine maintenance and repairs to the municipal system for a set monthly or annual fee or may contract with the water association periodically to make specific repairs. Tullos, Sept. 28, 2001, A.G. Op. #01-0583.

If municipal governing authorities determine that a utility is an "entire waterworks system", then its acquisition by eminent domain would be a "purchase" requiring an election by the voters under Section 21-27-3 (1972). Helmert, Oct. 28, 2005, A.G. Op. 05-0518.

RESEARCH REFERENCES

Am Jur. 26 Am. Jur. 2d, Eminent Domain § 66.

7A Am. Jur. Legal Forms 2d, Easements and Licenses in Real Property § 94:64 (easement of strip of land for sewers and water mains in subdivision).

20 Am. Jur. Legal Forms 2d, Waterworks and Water Companies § 261:32 (lease of water filtration plant from private company to municipality).

20A Am. Jur. Pl & Pr Forms (Rev), Public Utilities, Form 34 (complaint by municipality charging private water company with violations of statutes and commission regulations).

25 Am. Jur. Pl & Pr Forms (Rev), Waterworks and Water Companies, Form 1 (petition or application for order directing water company to install fire hydrants).

25 Am. Jur. Pl & Pr Forms (Rev), Waterworks and Water Companies, Forms 21 et seq. (liability for damages caused by escape of water).

18 Am. Jur. Pl & Pr Forms (Rev), Municipal, School, and State Tort Liability, Forms 161-172 (complaint, damages involving water system).

8 Am. Jur. Trials 57, Condemnation of Rural Property for Highway Purposes.

11 Am. Jur. Trials 189, Condemnation of Urban Property.

CJS. 29A C.J.S., Eminent Domain § 35.

§ 21-27-9. Testing of water, electric and gas meters; authority to prosecute persons for tampering with meters.

If, upon complaint of any citizen or citizens interested, the governing authorities of any municipality find that there is reasonable ground for believing that any meter or meters intended to measure or register the quantity of water, electric light or power, or gas supplied or furnished by any individual, company or corporation to the municipality or its inhabitants is or are measuring or registering incorrectly or excessively or is or are of a less candle power or degree of brilliancy than required by contract, such governing authorities may employ an expert, who shall examine and test said meter or meters, or said light or lights, as the case may be, and report back to said governing authorities, notice of the time and place of the proposed test or tests being first given to all parties interested. If such examination or test shall show the fact that said meter or meters measure or register incorrectly or excessively, or that said light or lights are of a less candle power or brilliancy than required by contract, then all expenses of such examination and test incurred by said municipal governing authorities shall be charged against and collected back from said individual, company or corporation supplying or furnishing such water, electric light or power, or gas, as the case may be, and such penalties may be imposed as the municipal ordinances may provide.

The governing authorities of any municipality are authorized to prosecute any person tampering with electric, gas or water meters as provided in Section 97-25-3.

SOURCES: Codes, 1906, § 3353; Hemingway's 1917, § 5850; 1930, § 2429; 1942, § 3374-141; Laws, 1950, ch. 491, § 141; Laws, 1992, ch. 385, § 1, eff from and after July 1, 1992.

Cross References — Municipal authorities inspecting public utilities, see § 21-27-37.

MUNICIPALLY OWNED UTILITIES

Sec.
21-27-11. Definitions.
21-27-13. Establishment of public utility commission; qualifications, appointment, terms of office, powers and duties, compensation and bonds of commissioners; exercise of powers when commission not established.
21-27-15. Governing authorities may remove any commissioner for cause, but may not abolish the commission.
21-27-17. Powers and duties of commission.
21-27-19. Disposition of revenues by commission.
21-27-21. Commission to keep records of service furnished municipality.
21-27-23. General powers of municipality as to creation, maintenance, and operation of public utility systems.
21-27-25. Borrowing money for improvement, extension, repair or stockpiling fuel of system.
21-27-27. Free service.
21-27-29. Rates not to be supervised by state; no franchise required.
21-27-31. Keeping of books and accounts by municipality.
21-27-33. Municipality may dispose of public utility systems.
21-27-35. Utilization of proceeds of sale of public utility system.
21-27-37. Inspection of utility authorized; penalty for violation.
21-27-39. Municipalities may furnish services to consumers outside corporate limits.
21-27-40. Contract for extension of natural gas transmission lines into, and service with, natural gas district.
21-27-41. Ordinance to be enacted before bonds are issued.
21-27-43. Electorate to vote on issuance of bonds.
21-27-45. Details of bonds; sale; fiscal advisor.
21-27-47. Utilization of revenues of system to pay off bonds.
21-27-49. Services of system may be used by municipality.
21-27-51. Refunding bonds; consolidated bonds.
21-27-53. Default on bonds.
21-27-55. Bonds may be called.
21-27-57. Disposition of revenues.
21-27-59. General revenues may be used for operation and maintenance of system.
21-27-61. Distribution of revenues and surplus; minutes of municipal governing authorities.
21-27-63. Contracts and liens not impaired.
21-27-65. Penalty for failing to set aside trust funds.
21-27-67. Construction of sections.
21-27-69. Obligations under repealed laws remain valid.
21-27-71. Issuance of bonds in municipalities of more than one hundred thousand population.
21-27-73. Contract for purchase of supply of natural gas from any public nonprofit corporation for up to 10 years.

§ 21-27-11. Definitions.

Whenever used in Sections 21-27-11 through 21-27-69:

(a) The term “municipality” includes any incorporated city, town or village of the State of Mississippi, whether incorporated under a special charter or under the general laws of the State of Mississippi governing municipalities, and operating under any form of municipal government.

However, for the purpose of establishing a motor vehicle transportation system for the transportation of passengers within the boundaries of the governmental unit or units concerned, and within three (3) miles thereof, the word "municipality" is defined to include counties and groups of municipalities and shall allow those governmental units to establish a commission as provided in Section 21-27-13 and exercise the powers granted in Sections 21-27-11 through 21-27-69. Each county or municipality joining together shall be allowed at least one (1) commissioner representing that governing authority. For the purpose of establishing a railroad transportation system for passengers and freight, the term "municipality" includes any county bordering the Mississippi River and in which Highways 49 and 61 intersect, and such county may exercise the powers granted in Sections 21-27-11 through 21-27-69;

(b) The term "system" includes waterworks system, water supply system, sewage system, sewage disposal system, or any combination thereof, including any combined waterworks and sewage system, consisting of an existing waterworks system or water supply system or both, combined with an existing sewage system or sewage disposal system or both, or consisting of an existing waterworks system or water supply system or both, combined with a sewage system or sewage disposal system or both, to be acquired, (as defined herein), or consisting of an existing sewage system or sewage disposal system or both, combined with a waterworks system or water supply system or both, to be acquired, (as defined herein), gas producing system, gas generating system, gas transmission system or gas distribution system, or any one (1) or all thereof, electric generating, transmission, or distribution system, garbage disposal system, rubbish disposal system, and incinerators, and all parts and appurtenances thereof. The term "system" also includes a motor vehicle transportation system for the transportation of passengers within the city limits and within three (3) miles thereof. The term "system" also includes a railroad transportation system of any municipality located within a county bordering the Mississippi River and in which Highways 49 and 61 intersect for the transportation of passengers and freight regardless of the amount of area outside the jurisdictional limits of such municipality for which the system provides service; the railroad transportation system may be located partially outside the boundaries of the county. The term "system" also includes a motor vehicle transportation system for the transportation of passengers of any municipality with a population of more than forty-five thousand (45,000) but less than forty-five thousand one hundred (45,100) according to the 1970 federal decennial census regardless of the amount of area outside the city limits of such municipality for which the system provides service. Wherever in Sections 21-27-11 through 21-27-69 any one or more of the systems authorized under this section are referred to, the same shall include motor vehicle transportation systems. The term "system" also includes any franchise held by the owner thereof and shall also include operations within the capabilities of any component facility within the system which reasonably utilize the public resources;

(c) The term "improvement" includes repair, betterment, enlargement, extension and other improvements to a system;

(d) The term "acquire" includes construct, purchase, gift, exercise of power of eminent domain and other methods by which a municipality may acquire a system;

(e) The term "improve" includes repair, better, enlarge, extend and other methods of improving a system;

(f) The term "ordinance" includes ordinance, resolution or other appropriate legislative enactment of the governing authorities of any municipality.

SOURCES: Codes, 1942, §§ 3519-07, 3519-07.7; Laws, 1934, ch. 317; Laws, 1936, ch. 186; Laws, 1942, ch. 231; Laws, 1950, ch 494, § 7; Laws, 1952, ch. 372 § 22; Laws, 1962, ch. 550, § 1; Laws, 1970, ch. 496, § 1; Laws, 1979, ch. 411, § 1; Laws, 1987, ch. 502, § 1; Laws, 1999, ch. 520, § 1; Laws, 2000, ch. 313, § 1, eff from and after passage (approved Apr. 3, 2000.)

Cross References — General grant of authority to municipality to establish and maintain public utility system, see § 21-27-23.

Supervision of rates and requirement of franchise, see § 21-27-29.

Definition of municipality, see § 21-27-91.

Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

Other definitions regarding public utilities, see § 77-3-3.

Development of electrical power in counties, see §§ 77-5-301 et seq.

Definitions concerning municipal electric power, see § 77-5-403.

Municipalities joining in the furnishing of electric power, see §§ 77-5-701 et seq.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

Under this statute a city may own and operate its own plant for the distribution of electricity. Mississippi Power Co. v. City of Aberdeen, 95 F.2d 990 (5th Cir. 1938).

ATTORNEY GENERAL OPINIONS

City may legally allow city bus to deliver senior citizens to and from Senior Citizens Center several days per week as part of its bus route. Shepard Sept. 9, 1993, A.G. Op. #93-0612.

While municipalities have authority to establish, maintain and operate natural gas system they have no authority to engage in sale of gas appliances as proper municipal purpose. Woods Oct. 6, 1993, A.G. Op. #93-0640.

Municipalities do not have an exclusive right to serve a particular area with utility service. Smith, Nov. 12, 1999, A.G. Op. #99-0571.

RESEARCH REFERENCES

ALR. Discrimination between property within and that outside municipality or other governmental district as to public service or utility rates. 4 A.L.R.2d 595.

Right of public utility to discontinue line or branch on ground that it is unprofitable. 10 A.L.R.2d 1121.

What is a "mass transportation company" under § 3(e) of the Urban Mass Transportation Act of 1964 (49 USCS Appx. § 5323). 48 A.L.R. Fed. 908.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 535 et seq.

§ 21-27-13. Establishment of public utility commission; qualifications, appointment, terms of office, powers and duties, compensation and bonds of commissioners; exercise of powers when commission not established.

The governing authorities of any municipality which now owns and operates, or hereafter shall own and operate, any system or systems shall have the power and authority to create a commission to control, manage and operate such systems, or any one or more of them, which said commission shall consist of not less than three (3) nor more than five (5) commissioners, to be elected by the governing authorities of such municipality. In any municipality operating under the council-manager plan of government, such commissioners shall be selected by, and shall be under the control of, the mayor and councilmen of the municipality, and not the city or town manager. Such commissioners shall have the power, authority and duty to manage and control said system or systems and the supply of the facilities and services thereof, both within and without the limits of the municipality. Such commissioners shall be qualified electors of the municipality and shall not hold any other municipal office for honor or profit. Such commissioners shall receive such compensation as may be specified and provided by the governing authorities of said municipality; provided, however, that any commission formed for the purpose of establishing a motor vehicle transportation system for the transportation of passengers within the boundaries of the governmental unit or units concerned, and within three (3) miles thereof, may pay its commissioners from the operating budget of such commission per diem compensation in the amount provided by Section 25-3-69 for each day or fraction of a day engaged in attendance of meetings of the commission or engaged in other official duties of the commission, not to exceed forty-five (45) days in any one (1) year. The governing authorities of the municipality are hereby authorized and empowered to require such commissioners to furnish bonds for the faithful performance of their duties, in the amount as may be deemed proper, and to pay the premiums thereon from the municipal treasury or the available funds of the said system or systems. Where there are three (3) members of such commission, the term of office shall be for a period of three (3) years, and where there are four (4) members the term of office shall be for a period of four (4) years, and where there are five (5) members the term of office shall be for a period of five (5) years. However, in making the first appointment of commissioners, one (1) shall be appointed for a term of one (1) year, one (1) for a term of two (2) years, one (1) for a term of three (3) years and, where necessary, one (1) for a term of four (4) years, and one (1) for a term of five (5) years, so that thereafter the term of office of one (1) commissioner shall expire each year. Where the governing authorities of the municipality do not elect to create a commission as herein provided, then any system or systems owned and operated by the municipality shall be controlled and managed by the governing authorities of the municipality, who shall have all the power and authority conferred upon such commission.

SOURCES: Codes, Hemingway's 1917, §§ 6007, 6008; 1930, §§ 2617, 2618; 1942, §§ 3519-01, 3519-01.5; Laws, 1910, ch. 170; Laws, 1940, ch. 283; Laws, 1950, ch. 494, § 1; Laws, 1952, ch. 372, § 23; Laws, 1995, ch. 451, § 1, eff from and after July 1, 1995.

Cross References — Public utilities' erecting posts and wires and laying pipes, conduits and pipelines, see §§ 21-27-3, 21-27-5.

Definitions regarding public utilities, see §§ 21-27-11 and 77-3-3.

Governing authorities being unable to abolish the utility commission, see § 21-27-15.

Powers and duties of the utility commission, see § 21-27-17.

No state supervision of rates or franchise being required, see § 21-27-29.

Default on public utility bonds, see § 21-27-53.

General revenues being used for operation and maintenance of public utilities, see § 21-27-59.

Construction of sections pertaining to municipally-owned utilities, see § 21-27-67.

Reproduction and destruction of records of municipally-owned utilities generally, see § 21-27-93.

Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

Where a city at the expense of property owners of the city constructed a sewer system and allowed owners of residences outside the city to use the facilities for a charge, such owners could not prevent the city from disconnecting its line from their line at the city limits to enforce the charge levied. Wells v. City of Jackson, 223 Miss. 228, 77 So. 2d 925 (1955).

The town has the authority to procure and pay for necessary legal services and to sell its bonds after the same have been authorized by the qualified electors and election called for such purpose, and to enter into a contract with the purchaser of such bonds upon such terms as the town and the purchaser may have agreed upon. J.S. Love Co. v. Town of Carthage, 218 Miss. 11, 65 So. 2d 568 (1953).

Where mayor and aldermen of the Town of Heidelberg made a contract with individuals for rendering of services at a certain commission for establishing the natural gas system for the town, and the contract was invalid, the general validating statute of 1952 did not validate the contract because it was clearly outside of authority of mayor and aldermen. J.S. Love Co. v. Town of Carthage, 218 Miss. 11, 65 So. 2d 568 (1953).

There is nothing in the statute which authorizes a municipality to employ an agent to sell bonds, or to enter into a pre-election contract for the sale of such bonds, or to delegate to a group of investment bankers or a group experienced in the securities business generally and in the field of revenue bonds especially, the power and authority to procure for the municipality necessary legal and engineering services required in connection with the construction of public utility improvements and to pay a fee therefor. J.S. Love Co. v. Town of Carthage, 218 Miss. 11, 65 So. 2d 568 (1953).

There is nothing in a statute that the power to issue bonds, for the purpose of acquiring or improving any revenue producing public utility system and to issue revenue bonds for purpose of acquisition and improvement of such system, is in any way contingent upon the creation of a commission to manage and control the system, and the municipal bond issue was not dependent upon validity of creation of public service commission. Spencer v. Mayor & Bd. of Aldermen, 215 Miss. 160, 60 So. 2d 562 (1952).

Where in a statute, which permits municipalities after authorization by voters in special election to issue public utility improvement revenue bonds, there is a provision which states that no bond issue pursuant to acts should constitute an indebtedness within the meaning of any statutory or charter limitation, this was not unconstitutional. Spencer v. Mayor & Bd. of Aldermen, 215 Miss. 160, 60 So. 2d 562 (1952).

Where a constitutional provision requires ways to be made by general laws to prevent abuse by municipal corporations of powers of taxation and contracting debts, and it is not self-executing, and it requires legislation to put into effect, it is the duty of the legislature to say what constitutes abuse of such powers of municipality, and to provide checks thereon. Spencer v. Mayor & Bd. of Aldermen, 215 Miss. 160, 60 So. 2d 562 (1952).

2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

The city authorities have the discretion to refuse to extend the city water system unreasonably. City of Greenwood v. Provine, 143 Miss. 42, 108 So. 284, 45 A.L.R. 824 (1926).

A decision of the municipal authorities to extend municipal water system to new territory is final, in the absence of abuse of discretion. City of Greenwood v. Provine, 143 Miss. 42, 108 So. 284, 45 A.L.R. 824 (1926).

A resident of a municipality cannot compel extension of water mains regardless of cost. City of Greenwood v. Provine, 143 Miss. 42, 108 So. 284, 45 A.L.R. 824 (1926).

A city cannot be required to make an unreasonable extension of water mains and the authorities of the city are vested with the authority to determine said matter. City of Greenwood v. Provine, 143 Miss. 42, 108 So. 284, 45 A.L.R. 824 (1926).

And mandamus will not lie against the authorities of a city to compel an extension of the water system. City of Greenwood v. Provine, 143 Miss. 42, 108 So. 284, 45 A.L.R. 824 (1926).

ATTORNEY GENERAL OPINIONS

Employees of the Commission are subject to the same legal limitations as are other municipal employees with respect to leave, vacation, sick leave, holidays and compensation because the Meridian Transportation Commission was created pursuant to Section 21-27-13, which means the city owns and operates the municipal transportation system. Primeaux, November 15, 1996, A.G. Op. #96-0501.

It is not legally permissible for one who is not a qualified elector of the municipality to serve as a municipal utilities commissioner. Miss. Code Ann. § 21-27-13 requires that members of a municipal utilities commission "shall be qualified electors of the municipality" in language that is plain and unambiguous and conveys a clear and definite meaning. The meaning of an unambiguous statute cannot be restricted or enlarged. Collins, February 2, 2007, A.G. Op. #07-00016, 2007 Miss. AG LEXIS 3.

A utility commission created under Miss. Code Ann. § 21-27-13 et seq. is authorized to work on the "public utility system" and not on privately owned lines and equipment. In order to ensure the "safe, economic and efficient operation" of the system it may sometimes be necessary for the commission to enter private property to address emergencies, but the commission has no authority to charge for such services. Montgomery, March 30, 2007, A.G. Op. #07-00131, 2007 Miss. AG LEXIS 93.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Utilities §§ 193, 194.

7 Am. Jur. Legal Forms 2d, Drains and Drainage Districts § 92:21 (notice of intention to create drainage or sewerage district).

13A Am. Jur. Legal Forms 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 180:71 (ordinance establishing sewer service rate commission).

§ 21-27-15. Governing authorities may remove any commissioner for cause, but may not abolish the commission.

The governing authorities of such municipality shall have the power to remove any member of said commission for inefficiency or incompetency or any other cause, but the governing authority of any municipality which has created a commission under the terms of Section 21-27-13, shall not have authority to abolish the commission, or to diminish its powers, except by a vote of a majority of the qualified electors of such municipality at a special election, duly called and held for that purpose. However, nothing herein shall limit, alter, impair or in any way change the procedure prescribed for the sale or lease of a public utility system under Section 21-27-33.

SOURCES: Codes, Hemingway's 1917, § 6011; 1930, § 2621; 1942, § 3519-04; Laws, 1910, ch. 170; Laws, 1940, ch. 283; Laws, 1950, ch. 494, § 4; Laws, 1962, ch. 549, eff from and after passage (approved May 31, 1962).

Cross References — Municipality's disposing of public utility system, see § 21-27-33.

Removal, suspension, demotion, and discharge of individuals under civil service system, see §§ 21-31-23, 21-31-71.

Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

§ 21-27-17. Powers and duties of commission.

The commission provided for by Section 21-27-13 is authorized to make such bylaws for the holding and conduct of its meetings and such other regulations as it may deem necessary for the safe, economic and efficient management and protection of the system or systems, and such bylaws and regulations shall have the same validity as an ordinance duly passed by the governing authorities of any municipality.

It is authorized to elect such officers and appoint such employees as may be necessary to operate the system or systems efficiently, and it shall have the entire control and management of such system or systems, together with all property connected or appertaining in any manner to such system or systems. The commission shall have the authority to employ a superintendent or manager of the systems, who shall have actual charge of the management and operation thereof and of the enforcement and execution of all the rules, regulations, programs, plans and decisions made and adopted by the commission in making purchases for materials and supplies to be used in the operation of the systems. In addition to any other purchasing authority granted by law, the commission may purchase electric transmission line materials, electric distribution system substation equipment, transformer equipment, and all other appliances, apparatus, machinery, equipment and appurtenances necessary for the sale of electricity, such as utility vehicles and fencing, from the surplus inventory of the Tennessee Valley Authority or any other similar agency of the federal government and electric power associations. These purchases shall be exempt from the public bid requirements prescribed in Sections 31-7-12 and 31-7-13. However, for all other purchases, the commission shall advertise for competitive bids in the manner and form as is required in accordance with Section 31-7-13. The superintendent or manager shall make and keep full and proper books and records of all purchases and shall submit them to the commission for its approval and ratification before payment thereof is authorized to be made. The commission may authorize the superintendent or manager to immediately refund to a customer of the municipally owned utility his or her deposit for municipal utility services after the superintendent or manager has determined that payment for all services and any other obligations which the customer may have incurred in regard to the municipal utility has been made. It shall have the right to fix the salaries and term of office of all employees and to direct them in the discharge of their duties. It shall have the right to require good and sufficient bonds from all officers and employees in such amounts as it may deem proper. It shall have the right to discharge employees when found inefficient or for other good cause. It shall have the power to make and collect rates for services and facilities, and appropriate funds for the maintenance and improvements of such systems. It is authorized to borrow from the Mississippi Development Bank in order to fund advance purchases of energy for gas producing, generating, transmission or distribution system or its electric generating, transmission or distribution system. It is authorized to insure all property used in the operation of such systems, including buildings, furniture, books and records, against loss by fire and tornado, and to carry sufficient amount of employers liability, steam boiler, plate glass and other miscellaneous casualty insurance, as in the discretion of the commission may be deemed proper, and to pay premiums therefor out of the funds derived from the operation of the systems. It shall report quarterly to the governing authorities of the municipality of all its doings and transactions of every kind whatsoever and shall make a complete statement of the financial condition of the systems at the end of each quarter, and shall annually make a detailed statement covering the entire management and operation of the systems, with any recommendations which it may have for the further development of the systems. At any time, the commission, by order or resolution, may authorize the expansion of activities of any component facility to include processing of materials on a custom basis or the processing and marketing of materials acquired to fully and efficiently utilize existing plant capacity. It shall also provide copies of all such quarterly and annual reports and statements to the Public Service Commission when so directed under Section 77-3-6.

The commission provided for by Section 21-27-13 is also authorized to allow a municipally owned utility to prepay the utility's bills to those electricity suppliers which offer early payment discounts to the municipally owned utility.

SOURCES: Codes, Hemingway's 1917, §§ 6009, 6010; 1930, §§ 2619, 2620; 1942, §§ 3519-02, 3519-03; Laws, 1910, ch. 170; Laws, 1940, ch. 283; Laws, 1950, ch. 494, §§ 2, 3; Laws, 1980, ch. 440, § 18; Laws, 1984, ch. 495, § 14; reenacted and amended, Laws, 1985, ch. 474, § 23; Laws, 1986, ch. 438, § 10; Laws, 1987, ch. 483, § 16; Laws, 1987, ch. 502, § 2; Laws, 1988, ch. 442, § 13; Laws, 1989, ch. 537, § 12; Laws, 1990, ch. 455, § 3; Laws, 1990, ch. 518, § 13; Laws, 1991, ch. 618, § 12; Laws, 1992, ch. 491 § 13; Laws, 1994, ch. 547, § 2; Laws, 1997, ch. 498, § 1; Laws, 1998, ch. 418, § 1; Laws, 1999, ch. 347, § 2, eff from and after July 1, 1999.

Cross References — Exercise of eminent domain in connection with hydro-electric companies' activities, see § 11-27-41.

Participation in a comprehensive plan of one or more policies of liability insurance procured and administered by Department of Finance and Administration see § 11-46-17.

General powers of municipality as to creation, maintenance, and operation of public utility systems, see § 21-27-23.

Governing authorities of municipality may authorize issuance of warrant or check for purpose of refunding utility deposit, see § 21-39-13(1)(c).

Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

Investigation and arbitration of billing and services between municipally owned or public utilities and customers, see § 77-3-6.

JUDICIAL DECISIONS

1. In general.

Provision of statute that the commission may discharge employees found inefficient or for other good cause creates a property interest in those employees in their employment and such interest is protected by procedural due process, which prevents their discharge without prior notice and an opportunity to be heard; In light of the fact that the commission is wholly engaged in the exercise of proprietary rather than governmental functions, and in light of the grant of extensive powers to the commission by this section it may be inferred that the commission may sue and be sued, and, in particular, that it is not immune from suit in an action arising under the United States Constitution. Sartin v. City of Columbus Utils. Comm'n, 421 F. Supp. 393 (N.D. Miss. 1976), aff'd, 573 F.2d 84 (5th Cir. 1978).

ATTORNEY GENERAL OPINIONS

A municipal utility commission may, as part of its employee benefits package, contribute a set amount each month to the health savings account (HSA) of each employee eligible under federal law to participate in an HSA. Kilgore, Aug. 20, 2004, A.G. Op. 04-0406.

A utility commission created under Miss. Code Ann. § 21-27-13 et seq. is authorized to work on the "public utility system" and not on privately owned lines and equipment. In order to ensure the "safe, economic and efficient operation" of the system it may sometimes be necessary for the commission to enter private property to address emergencies, but the commission has no authority to charge for such services. Montgomery, March 30, 2007, A.G. Op. #07-00131, 2007 Miss. AG LEXIS 93.

RESEARCH REFERENCES

ALR. Requirement that public contract be awarded on competitive bidding as applicable to contract for public utility. 81 A.L.R.3d 979.

Am Jur. 64 Am. Jur. 2d, Public Utilities §§ 192, 195, 196-200.

15A Am. Jur. Legal Forms 2d, Public Utilities § 215:12 (application for authority to increase rates).

15A Am. Jur. Legal Forms 2d, Public Utilities § 215:13 (application for approval of expansion of facilities by municipality or other political subdivision).

15A Am. Jur. Legal Forms 2d, Public Works and Contracts §§ 216:10 et seq. (competitive bidding and award of contract).

15A Am. Jur. Legal Forms 2d, Public Works and Contracts §§ 216:49 et seq. (public contracts).

15A Am. Jur. Legal Forms 2d, Public Works and Contracts §§ 216:74 et seq. (stipulations, conditions, and other provisions of public contracts).

20A Am. Jur. Pl & Pr Forms (Rev), Public Utilities, Form 35 (complaint by individual consumer against electric company opposing rate increase).

20A Am. Jur. Pl & Pr Forms (Rev), Public Utilities, Forms 8-10, 26, 37, 50-54 (various orders of public service commission).

§ 21-27-19. Disposition of revenues by commission.

The commission shall devote all monies, derived from any source other than the issuance of bonds for purposes authorized by the laws of the State of Mississippi, to or for the payment of all operating expenses, including such items as are normally required of utilities for sales development; to or for the payment of all bonds and interest on outstanding revenue bonds, if any, of such systems; to or for the acquisition and improvement of the system contingencies; to or for the payment of all other obligations incurred in the operation and maintenance of the systems and the furnishing of service; to or for the creation and maintenance of a cash working fund or a surplus fund to be used for replacement, extension of systems, and emergencies. The balance of the revenues of said systems, if any, may be used for any other lawful municipal purpose and may be paid to the governing authorities of the municipality for distribution to the various municipal funds, or may be disbursed for said purpose by the said commission at the direction and request of the governing authorities of such municipality.

SOURCES: Codes, Hemingway's 1917, § 6012; 1930, § 2622; 1942, § 3519-05; Laws, 1910, ch. 170; Laws, 1940, ch. 283; Laws, 1950, ch. 494, § 5; Laws, 1958, ch. 529, § 1.

Cross References — Disposition of revenues by municipality's governing authorities, see § 21-27-57.

General revenues being used for operation and maintenance of public utilities, see § 21-27-59.

Revenues of public utilities being pledged for bond payments, see § 21-33-305.

Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

Taxation of municipal gas utilities to provide funds for benefit of public service commission, see § 77-11-201.

ATTORNEY GENERAL OPINIONS

Revenue bonds must be satisfied in full pursuant to this section prior to declaring a surplus in a fiscal year. In the alternative, a bond sinking fund must be established and sufficiently funded to pay all bonds and interest as they become due in the future. Spell, Dec. 19, 2003, A.G. Op. 03-0668.

Revenue bonds must be satisfied in full pursuant to this section and §§ 21-27-57 and 21-27-61 prior to declaring a surplus in a fiscal year. However, in the alternative, a bond sinking fund would have to be established and sufficiently funded to pay all bonds and interest as they become due in the future. If this second option is satisfied and all other obligations of the system are satisfied, any remaining surplus funds may be transferred to the governing authority of the municipality to deposit in the municipal general funds. Neeld, May 28, 2004, A.G. Op. 04-0184.

§ 21-27-21. Commission to keep records of service furnished municipality.

The commission shall keep an accurate account and record of power, current, water, or other services furnished to all departments of the municipality.

SOURCES: Codes, 1942, § 3519-06; Laws, 1940, ch. 283; Laws, 1950, ch. 494, § 6, eff from and after July 1, 1950.

§ 21-27-23. General powers of municipality as to creation, maintenance, and operation of public utility systems.

Any municipality may:

(a) Borrow money and issue revenue bonds therefor solely for the purposes specified in this section and by the procedure provided in Sections 21-27-41 through 21-27-69.

Money may be borrowed and bonds issued by any municipality of the State of Mississippi, as defined in Section 21-27-11, to acquire or improve any waterworks system, water supply system, sewerage system, sewage disposal system, garbage disposal system, rubbish disposal system or incinerators, gas producing system, gas generating system, gas transmission system, or gas distribution system, electric generating, transmission or distribution system, railroad transportation system for passengers and freight, or motor vehicle transportation system, including any combination of any or all of those systems into one (1) system, within or without the corporate limits thereof, for the purpose of supplying the municipality and the persons and corporations, both public and private, whether within or without its corporate limits, with the services and facilities afforded by the system, provided that water, electric energy, or gas afforded by any system or systems may be supplied to such ultimate consumers thereof by sale thereof to the owners or operators of a distribution system for resale to the public. Any municipality which shall borrow money and issue revenue bonds to provide funds with which to acquire a gas transmission system, if necessary in order to reach and obtain a source of supply of gas for the municipality, may extend or construct its gas transmission line into an adjoining state, and may use and expend part of the proceeds of such issue of revenue bonds for the purpose.

(b) To assume all indebtedness for any system or systems which may be acquired under the provisions of this section as all or part of the consideration for the acquisition of such system or systems and to issue its revenue bonds in exchange for the bonds or notes evidencing the indebtedness.

(c) To acquire or improve any system which it is authorized to borrow money and issue revenue bonds under subsection (a) of this section to acquire or improve; and to make contracts in furtherance thereof or in connection therewith.

(d) To own, operate and maintain any such system or combination of any and all of said systems into one (1) system.

(e) To establish, maintain and collect rates for the facilities and services offered by any such system; provided that if there is a combination of systems into one or more systems, the municipality establishing the same shall be and is empowered to establish, maintain and collect rates for any and all of the services or for any combination thereof, and the municipality may discontinue any or all of the services upon any failure to promptly pay the charges fixed for the services. The rates so fixed for services rendered by any system or combination thereof may be charged for all services rendered thereby, regardless of whether the services may have been previously rendered without rates or charges therefor by the previously existing waterworks system, water supply system, sewerage system, sewage disposal system, garbage disposal system, rubbish disposal system or incinerators, gas producing system, gas generating system, gas transmission system, or gas distribution system, electric generating, transmission or distribution system, which shall have been merged into the combined system. Any such municipality may pledge for the payment of any bonds issued to acquire or improve any such combined system, or to refund any bonds previously issued to acquire or improve any such combined system or to acquire or improve any system merged with such combined system, the revenues to be derived from the operation of such combined system, including the charges authorized to be imposed by this section.

A municipality may authorize a municipally owned utility to make early payment of the utility's bills to its electricity suppliers which offer early payment discounts to the municipally owned utility. The municipality may immediately refund to a customer of the municipally owned utility his or her deposit for municipal utility services after the municipal utility has determined that payment for all services and any other obligations which the customer may have incurred in regard to the municipal utility has been made.

If the revenues of any previously existing system being merged into a combined system are subject to a prior lien, the revenues and the expenses of any previously existing system shall be accounted for separately to the extent necessary to satisfy the covenants relating to the prior lien for so long as the indebtedness secured by the revenues shall remain outstanding. Only surplus revenues remaining after the satisfaction of all covenants relating to the outstanding indebtedness may be pledged to the retirement of any indebtedness to be secured by the revenues of a combined system. The existence of the outstanding indebtedness shall not, in and of itself, prevent the combining of systems as herein provided, so long as the prior lien on the revenues of any previously existing system is fully satisfied from the revenues of the previously existing system.

(f) To acquire property, real or personal, which may be necessary to effectuate the powers conferred by this section. The municipality may purchase electric transmission line materials, electric distribution system substation equipment, transformer equipment, and all other appliances, apparatus, machinery, equipment and appurtenances necessary for the sale of electricity, such as utility vehicles and fencing, from the surplus inventory of the Tennessee Valley Authority or any other similar agency of the federal government and electric power associations. These purchases by the municipality shall be exempt from the public bid requirements prescribed in Sections 31-7-12 and 31-7-13. If the power of eminent domain is exercised, it shall be exercised in the manner provided by Sections 11-27-1 through 11-27-51.

(g) To enter into contract with the United States of America or any agency thereof, under the provisions of acts of the Congress of the United States, to aid or encourage public works and the regulations made in pursuance thereof, for the sale of bonds issued in accordance with the provisions of Sections 21-27-41 through 21-27-69 or for the acceptance of a grant to aid such municipality in acquiring or improving any such system; and the contracts may contain terms and conditions as may be agreed upon by and between the municipality and the United States of America or any agency thereof, or any purchaser of the bonds.

(h) To adopt the ordinances and resolutions and to do all things and perform all acts necessary, proper or desirable to effectuate the full intent and purpose of Sections 21-27-11 through 21-27-69, including processing, marketing, custom processing, sale and resale of materials processed through any facility under its jurisdiction.

(i) To borrow from the Mississippi Development Bank in order to fund the advance purchase of energy for its gas producing, generating, transmission or distribution system or its electric generating, transmission or distribution system.

SOURCES: Codes, 1942, § 3519-08; Laws, 1934, ch. 317; Laws, 1936, ch. 186; Laws, 1942, ch. 231; Laws, 1950, ch. 494, § 8; Laws, 1962, chs. 551, 552; Laws, 1973, ch. 389, § 1; Laws, 1980, ch. 451; Laws, 1982, ch. 368, § 1; Laws, 1987, ch. 502, § 3; Laws, 1994, ch. 547, § 3; Laws, 1997, ch. 498, § 2; Laws, 1998, ch. 418, § 2; Laws, 1999, ch. 347, § 3; Laws, 1999, ch. 520, § 3, eff from and after July 1, 1999.

Joint Legislative Committee Note — Section 3 of ch. 347 Laws, 1999, effective from and after July 1, 1999 (approved March 15, 1999), amended this section. Section 3 of ch. 520, Laws, 1999, effective July 1, 1999 (approved April 15, 1999), also amended this section. As set out above, this section reflects the language of Section 3 of ch. 520, Laws, 1999, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Cross References — Exercise of eminent domain generally, see §§ 11-27-1 et seq.

Authority of municipalities to erect, purchase, maintain and operate waterworks, see § 21-27-7.

Definition of the term "system," see § 21-27-11(b).

Definition of "municipality" in connection with operating a motor vehicle transportation system, see § 21-27-11.

Disposition of revenues of system, see §§ 21-27-19, 21-27-57.

No state supervision of rates or franchise being authorized, see § 21-27-29.

Municipality's keeping of books and accounts of revenue bonds issued, see § 21-27-31.

Ordinance being enacted before bonds are issued, see § 21-27-41.

Electorate voting on bond issue, see § 21-27-43.

Details of bond sales, see § 21-27-45.

Use of revenues of public utilities system to pay off bonds, see § 21-27-47.

Refunding or consolidated bond issues, see § 21-27-51.

Default on bonds, see § 21-27-53.

Bonds being called for payment, see § 21-27-55.

Disposition of revenues, see § 21-27-57.

Use of surplus funds, see § 21-27-61.

Penalty for failing to set aside trust funds see § 21-27-65.

Issuance of bonds in municipalities of more than 100,000 population, see § 21-27-71.

Issuance of municipal bonds generally, see §§ 21-33-301 et seq.

Exercise of eminent domain by municipality, see § 21-37-47.

Refund on bonds not based on ad valorem tax, see § 31-15-21.

Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

Powers of municipalities concerning electric service, see §§ 77-5-405 et seq.

Municipalities joining to furnish electric power, see §§ 77-5-701 et seq.

What constitutes forgery in connection with public securities, see § 97-21-9.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

This section gives municipalities the authority to condemn property necessary for creation and maintenance of public utilities. City of Gulfport v. Orange Grove Utils., Inc., 735 So. 2d 1041 (Miss. 1999).

Wisdom of constructing a municipally owned electrical distribution system in competition with one privately owned cannot be judicially inquired into. Mississippi Power & Light Co. v. Town of Coldwater, 234 Miss. 615, 106 So. 2d 375 (1958), suggestion of error sustained, 234 Miss. 615, 112 So. 2d 222 (1958).

Under this section [Code 1942, § 3519-08] and Code 1942, § 5528 municipalities have the power to acquire an electric light plant and provide service to would-be users. Mississippi Power & Light Co. v. Town of Coldwater, 234 Miss. 615, 106 So. 2d 375 (1958), suggestion of error sustained, 234 Miss. 615, 112 So. 2d 222 (1958).

2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

In the exercise of the powers granted by statute with respect to constructing and maintaining waterworks and sewerage systems, the municipality may employ civil engineers to make the necessary surveys and prepare the necessary plans and specifications, and to supervise the work after the awarding of contracts; it may employ attorneys to prepare the necessary orders and resolutions, to supervise the enactment of other necessary legal proceedings for the issuance and sale of bonds, and to give legal opinions as to the validity of the bonds; and it may pay for such engineering and legal services and other incidental expenses connected with the issuance and sale of the bonds and the construction of such public works out of the proceeds of the sale of the bonds, or perhaps out of the general fund of the municipality. Mayor & Bd. of Aldermen v. Engle, 211 Miss. 380, 51 So. 2d 564 (1951).

The governing authorities of a municipality have no right to delegate to a group of investment bankers the power and authority to procure for the municipality the necessary and legal engineering services which may be required to enable the municipality to issue and sell its revenue bonds and to construct the public utility improvements contemplated. Mayor & Bd. of Aldermen v. Engle, 211 Miss. 380, 51 So. 2d 564 (1951).

Under the statute regulating the issuance of bonds by the state or its political subdivisions (Law of 1946, ch 325, § 4357-01), there is no room f or the services of an underwriter in the sale of municipal bonds, and the governing authorities of a municipality have no power to enter into a contract of any kind for the payment of an underwriter's fee or commission to investment bankers for an underwriter's guarantee of the sale of municipal bonds, or for the purpose of procuring a purchaser for such bonds prior to the advertisement for and receipt of bids, or to enter into a pre-election conditional sales contract for the sale of such bonds. Mayor & Bd. of Aldermen v. Engle, 211 Miss. 380, 51 So. 2d 564 (1951).

Statute authorizing municipalities to acquire, own, and operate airports and "to do all things and perform all acts necessary, proper or desirable to effectuate the full intent and purpose of this act" held to include power and authority to contract and pay for proper or necessary engineering work in connection with airports. Town of Magee v. Mallett, 178 Miss. 629, 174 So. 246 (1937).

ATTORNEY GENERAL OPINIONS

Municipal governing authorities could secure professional services of attorney other than City Attorney to pursue collection of delinquent utility accounts provided attorney's compensation is by salary or fixed fee for such account handled, or on hourly basis; of course, first step toward collecting delinquent utility bills is termination of service following proper notice and opportunity for hearing on matter. Jones, June 13, 1990, A.G. Op. #90-0403.

While municipality may terminate garbage collection services to any customer who refuses to pay garbage collection fee of combined garbage, water, and sewer bill, it may not enforce collection of garbage fees by discontinuation of other municipal services. Hewes, July 15, 1992, A.G. Op. #92-0509.

Although utilities are generally responsibility of city, city is not required to construct facilities in proposed or undeveloped subdivision; normally, development is left to developer pursuant to local subdivision ordinances. Gibbs, Oct. 21, 1992, A.G. Op. #92-0757.

Credit incentive proposed by municipal utility was not authorized under Section 21-27-11 et seq. and would also be unlawful donation pursuant to Section 96 Miss. Const. of 1890. Young, Feb. 9, 1994, A.G. Op. #93-0898.

A municipality may bill water and gas customers each month a set amount which is calculated so that the amount the customer pays for the entire fiscal year is the same that the customer would pay if he or she were billed for the exact amount of water and gas used each month. However, the governing authorities must re-evaluate the amounts charged to customers at least once a year so that the amount each customer pays over the course of a year reflects the amount of water and gas actually used for the year. In addition, this billing plan may only be implemented for customers who elect the plan. See Section 21-27-23(e). Harlow, December 13, 1996, A.G. Op. #96-0809.

A municipality may assume debt to acquire a water supply system that extends to an area within five miles of its corporate limits, but it may not acquire an entire system when part of that system extends more than five miles beyond the boundaries of the municipality. Tutor, Aug. 29, 1997, A.G. Op. #97-0400.

A municipal governing authority may set a surcharge which is a flat rate in addition to a rate based upon the number of gallons. Wood, April 3, 1998, A.G. Op. #98-0126.

If a water department maintenance employee is paid wages or salary from utility system funds, then his services must be used exclusively for the operation of the water system; if the governing authority assigns the employee duties other than duties for the water department, then he must be paid from the appropriate fund, i.e., general funds, department fund or utility system fund, for the department or utility system for which he is rendering services. Gcee, May 1, 1998, A.G. Op. #98-0248.

A town had the right to terminate water service to an apartment complex without notice to the individual tenants where the parties to the contract for water service were the town and the owner of the apartment complex and the town had already given notice and an opportunity to be heard to the owner of the apartment complex. Davis, Nov. 12, 1999, A.G. Op. #99-0441.

A municipality may not charge a reconnection fee to a customer whose service was not actually cut off. Null, Dec. 17, 1999, A.G. Op. #99-0672.

Municipal governing authorities may request that customers bring a statement or account number with them to the city hall to pay for water services, but may not require customers to bring a statement or account number to the city hall to pay for water services when a search of the public records would reveal the account number. Crawford, March 3, 2000, A.G. Op. #2000-0089.

The present board of aldermen of a town could raise the rates of the former consumers of a water system association, even though the prior board of aldermen might have entered into a contract, by acceptance of a deed of conveyance of the assets of the water system association, to the contrary. Maxey, Jan. 11, 2002, A.G. Op. #01-0741.

A municipality may acquire a water system from a water association within the corporate limits and may switch the customers of the water association from a flat rate to a metered rate; it may phase in a metered rate structure in an area with a flat rate, charging customers without meters the flat rate and customers with meters according to the new rate in the transition period, or, alternatively, it may charge a flat rate for all customers in the area until such time as all or substantially all of the meters are installed and operating. Rose, Sept. 6, 2002, A.G. Op. #02-0464.

There is no state law requirement on the part of municipalities operating municipal utilities within the municipal boundaries or one mile of those boundaries to pay interest to consumers on security deposits held by the municipality; however, if such deposit is held in an interest-bearing account, the municipality may refund the deposit plus any interest which has accrued. Null, Sept. 13, 2002, A.G. Op. #02-0462.

Municipality may charge reasonable late fees for delinquent water/sewer accounts. Baker, Nov. 8, 2002, A.G. Op. #02-0624.

A town is entitled to terminate or disconnect the sewer service to customers of the sewer system who are not paying their bills for such service. There must be some process by which customers may dispute questionable charges. Richardson, Feb. 2, 2004, A.G. Op. 04-0011.

If a town disconnects a sewer, it may be reconnected to the customers' septic tank. Richardson, Feb. 2, 2004, A.G. Op. 04-0011.

No language can be found that requires rates for water and sewer services be set by ordinance. However, any ordinances which are currently in existence may not be "amended" by resolution. McNeill, Aug. 27, 2004, A.G. Op. 04-0437.

Once a fee for the connection of property within a municipality to a sewer has been established, the municipality may not forgive or waive those fees or rates or give a credit for future sewer bills for the equivalent months or years in which a citizen has paid and not been hooked up. Collins, Apr. 29, 2005, A.G. Op. 05-0209.

A municipal public utility commission does not have the authority to authorize the issuance of bonds in the name of the city. Odom, Mar. 17, 2006, A.G. Op. 06-0001.

A municipality may terminate utility services for nonpayment of a bill after giving notice and an opportunity to be heard in a meaningful time and manner to the utility customer. However, a municipality may not require a landlord to pay a tenant's water bill if the tenant is the customer of the utility system, and cannot refuse to provide water services to a tenant because a landlord or prior tenant has not paid a water bill. Accordingly, a municipality may not include a provision that precludes reinstatement of water/sewer services to said rental unit until the account applicable thereto is brought current. Povall, July 28, 2006, A.G. Op. 06-0315.

A governing authority may impose a flat-rate sewer surcharge to all residents, regardless of whether the resident is connected to the municipal system or not, but the utility system should not result in a profit-making venture. Dye, March 27, 2007, A.G. Op. #07-00117, 2007 Miss. AG LEXIS 94.

RESEARCH REFERENCES

ALR. Compensation or damages for condemning a public utility plant. 68 A.L.R.2d 392.

Right of municipality to refuse services provided by it to resident for failure of resident to pay for other unrelated services. 60 A.L.R.3d 714.

Breach of warranty in sale, installation, repair, design, or inspection of septic or sewage disposal systems. 50 A.L.R.5th 417.

Am Jur. 26 Am. Jur. 2d, Eminent Domain §§ 15, 48-51.

64 Am. Jur. 2d, Public Securities and Obligations § 99.

7 Am. Jur. Legal Forms 2d, Drains and Drainage Districts § 92:21 (notice of intention to create drainage or sewerage district).

7A Am. Jur. Legal Forms 2d, Easements § 94:63 (easement for utility poles on urban property).

7A Am. Jur. Legal Forms 2d, Easements § 94:64 (easement for strip of land for sewers and water mains).

7A Am. Jur. Legal Forms 2d, Easements § 94:65 (easement for construction and maintenance of gas pipeline).

15A Am. Jur. Legal Forms 2d, Public Works and Contracts § 216:52 (construction contract for municipal project).

20 Am. Jur. Legal Forms 2d, Waterworks and Water Companies § 261:32 (lease of water filtration plant from private company to municipality).

9 Am. Jur. Pl & Pr Forms (Rev), Drains and Drainage Districts, Form 23 (petition by landowner for review of municipality's decision to extend sewer district).

9 Am. Jur. Pl & Pr Forms (Rev), Drains and Drainage Districts, Forms 31, 32 (sewer district, exclusion of land).

9 Am. Jur. Pl & Pr Forms (Rev), Drains and Drainage Districts, Forms 41, 42 (sewer district, dissolution).

9 Am. Jur. Pl and Pr Forms (Rev), Electricity, Gas, and Steam, Forms 11 et seq. (eminent domain, obtaining rights of way).

9 Am. Jur. Pl & Pr Forms (Rev), Eminent Domain, Forms 1 et seq. (condemnation proceedings, authority, purpose, necessity and commencement).

18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, Counties, and Other

Political Subdivisions, Form 54 (water distribution system, enjoining establishment).

18 Am. Jur. Pl & Pr Forms (Rev), Municipal, School, and State Tort Liability, Forms 151 et seq. (claim or complaint, injuries involving water systems or electrical equipment).

18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, Counties, and Political Subdivisions (public utility, enjoining purchase).

8 Am. Jur. Trials 57, Condemnation of Rural Property for Highway Purposes.

11 Am. Jur. Trials 189, Condemnation of Urban Property.

CJS. 29A C.J.S., Eminent Domain §§ 34, 35, 41, 44, 45.

§ 21-27-25. Borrowing money for improvement, extension, repair or stockpiling fuel of system.

Any municipality which owns or operates any system, shall have the power and authority through its utilities commission to borrow money and issue its negotiable notes or certificates of indebtedness therefor, in an amount not to exceed ten percent (10%) of the gross revenues of the system in the last preceding fiscal year, in any calendar year, for the purpose of improving, repairing or extending any such system, or of stockpiling fuel for any such system, or systems, without the necessity of calling and holding an election upon such question or otherwise obtaining the consent of the qualified electors of the municipality, or giving any notice thereof. However, the utilities commission shall secure approval of the governing authorities of the municipality. In all cases where money is borrowed under the provisions of this section, the same shall be repaid within three (3) years and at no time shall the amount of money borrowed under this section exceed thirty percent (30%) of the gross revenues of the system for the last preceding fiscal year.

SOURCES: Codes, 1942, § 3519-26; Laws, 1950, ch. 494, § 26; Laws, 1958, ch. 529, § 5; Laws, 1978, ch. 337, § 1, eff from and after passage (approved March 7, 1978).

Cross References — Definition of the term "system," see § 21-27-11(b).

Inapplicability of requirement that electorate vote on such financing, see § 21-27-43.

Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

JUDICIAL DECISIONS

1. In general.

Section of charter of the city of Greenville providing that it shall be unlawful for the city to contract any debt unless there is in the hands of the treasurer sufficient money to meet the debt does not conflict with this section [Code 1942, § 3519-26], as this section authorizes the city to borrow the money to comply with the charter provision. City of Greenville v. Queen City Lumber Co., 227 Miss. 749, 86 So. 2d 860 (1956).

ATTORNEY GENERAL OPINIONS

A municipal public utility commission may only exercise such powers as are specifically granted by statute, and no specific authority can be found which would permit a commission to borrow money. Odom, Mar. 17, 2006, A.G. Op. 06-0001.

§ 21-27-27. Free service.

No free service shall be furnished by any such system, or combined system, to any private person, firm, corporation, or association. The municipality may, however, furnish such service, free of charge, to the municipality or any agency or department thereof, to any public school, or to any hospital or benevolent institution located within such municipality, including county, city, and community fairs.

SOURCES: Codes, 1942, § 3519-14; Laws, 1934, ch. 316; Laws, 1950, ch. 494, § 14, eff from and after July 1, 1950.

Cross References — Definition of the term "system," see § 21-27-11(b).
Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

ATTORNEY GENERAL OPINIONS

Although fire department may receive free municipal utilities, there is no such authority extending such service to private individuals such as volunteer firemen. Barlow Nov. 22, 1993, A.G. Op. #93-0820.

Credit incentive proposed by municipal utility was not authorized under Section 21-27-11 et seq. and would also be unlawful donation pursuant to Section 96 Miss. Const. of 1890. Young, Feb. 9, 1994, A.G. Op. #93-0898.

There is no authority for municipal governing authorities to pay indebtedness incurred by public school district for utility services with municipal funds, although free utilities may be furnished to public schools in accordance with Mississippi Code Annotated Section 21-27-27. Schissel, March 9, 1994, A.G. Op. #94-0102.

While municipality is prohibited from providing free water service to an individual, municipal governing authorities, upon a proper finding of fact that citizen was overcharged for his water service, would be authorized to allow appropriate credit toward the payment of future water bills. Baker, March 17, 1994, A.G. Op. #94-0111.

A municipality may not provide free water to volunteer firemen or other citizens. Norman, January 22, 1998, A.G. Op. #98-0014.

A municipality may not provide free water and sewer service to an individual, nonprofit organization or business, but it may provide free water and sewer service to a hospital or benevolent institution located within the corporate limits; thus, a town may provide free service to a local health clinic operated by the county if the clinic is located within the corporate limits. Null, January 30, 1998, A.G. Op. #98-0046.

A municipality does not have the authority to negotiate a settlement of any late fees or interest for customers to whom the municipality is not authorized to provide free services, unless there is a bona fide dispute. Snyder, March 20, 1998, A.G. Op. #98-0145.

A county water and sewer district could not provide water service to a public park located immediately adjacent to the district boundary and to "an additional community park located within the district's boundaries" without charging therefor. Fonda, October 9, 1998, A.G. Op. #98-0612.

A town had the right to terminate water service to an apartment complex without notice to the individual tenants where the parties to the contract for water service were the town and the owner of the apartment complex and the town had already given notice and an opportunity to be heard to the owner of the apartment complex. Davis, Nov. 12, 1999, A.G. Op. #99-0441.

A nonprofit corporation is not a benevolent institution for purposes of the statute simply by virtue of the fact that it has tax exempt status. Flanagan, Jr., Dec. 3, 1999, A.G. Op. #99-0622.

The statute prohibits a municipality from providing free water service to municipal employees as part of a wage/salary and benefit package. Evans, Jan. 7, 2000, A.G. Op. #99-0702.

A municipality may provide free service to "any hospital" located in the municipality and, therefore, may, in its discretion, provide free utility service to a private, profit-making corporation that owns a hospital in the municipality. Jones, April 7, 2000, A.G. Op. #2000-0163.

The statute does not permit the Municipal Gas Authority of Mississippi to institute a credit incentive program for its customers. Collins, June 7, 2002, A.G. Op. #02-0294.

A municipality may not provide free water service to a Mississippi National Guard unit. Pearson, July 19, 2002, A.G. Op. #02-0398.

A municipality does not have authority to provide free water services to volunteer firefighters living within the municipality as a part of a contract with a county volunteer fire department for fire protection services. Bassie, Oct. 11, 2002, A.G. Op. #02-0544.

A municipality may terminate utility services for nonpayment of a just bill after giving notice and an opportunity to be heard in a meaningful time and manner to the utility customer. Lewers, May 9, 2003, A.G. Op. 03-0222.

A municipality may not require a landlord to pay a tenant's water bill if the tenant is the customer of the municipal utility system. Lewers, May 9, 2003, A.G. Op. 03-0222.

A municipality may not refuse to provide water services to a tenant because a landlord or prior tenant has not paid a water bill. Lewers, May 9, 2003, A.G. Op. 03-0222.

A municipality may require a utility deposit of customers. Lewers, May 9, 2003, A.G. Op. 03-0222.

There is no authority for a municipality to provide free water to a volunteer fire department for fund raising activities of the volunteer fire department. Campbell, Oct. 14, 2003, A.G. Op. 03-0503.

The more specific language of § 21-19-2(2)(d), which authorizes governing authorities to grant exemptions to certain established categories of generators of garbage or rubbish on a case-by-case basis is controlling over the general language of this section, prohibiting systems from furnishing free services. Bobo, Jan. 16, 2004, A.G. Op. 03-0703.

Once a fee for the connection of property within a municipality to a sewer has been established, the municipality may not forgive or waive those fees or rates or give a credit for future sewer bills for the equivalent months or years in which a citizen has paid and not been hooked up. Collins, Apr. 29, 2005, A.G. Op. 05-0209.

Although no specific authority can be found which would enable a city to waive fees for municipal water and sewer service provided to hurricane victims, the rates may be amended to provide for alternate payment schedules or other accommodations for individuals meeting certain criteria. Trotter, Sept. 23, 2005, A.G. Op. 05-0484.

§ 21-27-29. Rates not to be supervised by state; no franchise required.

Rates charged for services furnished by any system or combined system purchased, constructed, improved, enlarged, extended or repaired under the provisions of Sections 21-27-11 through 21-27-69 shall not be subject to supervision or regulation by any state bureau, board, commission, or other like instrumentality or agency thereof. It shall not be necessary for any municipality operating under the provisions of said sections to obtain any franchise or other permit from any state bureau, board, commission or other instrumentality thereof, in order to construct, improve, enlarge, extend or repair any system or combined system. However, billing and service disputes between the system and its customers shall be subject to review and arbitration by the Public Service Commission as provided under Section 77-3-6.

SOURCES: Codes, 1942, § 3519-18; Laws, 1934, ch. 316; Laws, 1950, ch. 494, § 18; Laws, 1990, ch. 455, § 4, eff from and after July 1, 1990.

Cross References — Testing of water, electric and gas meters, see § 21-27-9.

Definitions regarding public utilities, see §§ 21-27-11 and 77-3-3 et seq.

Municipalities furnishing services to consumers outside corporate limits, see § 21-27-39.

Factors to be considered in fixing rates, see § 21-27-47.

Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

JUDICIAL DECISIONS

1. In general.

Act was intended to exempt from regulation municipal utility systems which municipalities were authorized by law to operate on the effective date of the act and it also was intended to subject to regulation extensions of utilities more than one mile beyond the corporate boundaries when such extensions were made after the act's effective date; the commission thus had authority to regulate water rates for a newly-purchased water utility beyond one mile from the city's corporate limits, though the initial rate order was void on due process grounds for failure to give notice to the city prior to its issuance. Williams v. McAfee, 328 So. 2d 656 (Miss. 1976).

RESEARCH REFERENCES

ALR. Discrimination between property within and that outside municipality or other governmental district as to public service or utility rates. 4 A.L.R.2d 595.

§ 21-27-31. Keeping of books and accounts by municipality.

Any municipality issuing revenue bonds pursuant to the authority granted in Section 21-27-23 shall install and maintain proper books of record and account (separate entirely from other records and accounts of such municipality), in which correct entries shall be made of all dealings or transactions of or in relation to the properties, business and affairs of the system or combined system. The governing authorities of such municipality, not later than three months after the close of any calendar, operating or fiscal year, shall cause to be prepared a balance sheet and an income and operating and surplus account showing, respectively, in reasonable detail, the financial condition of the system or combined system at the close of such preceding calendar, operating or fiscal year, and the financial operations thereof during such year. Said balance sheet and the income and operating and surplus account shall at all times during the usual business hours be open to examination and inspection by any taxpayer, user of the services furnished by the system, or any holder of bonds issued pursuant to the authority granted in

Section 21-27-23, or any one acting for or on behalf of such taxpayer, user of the services of the system, or bondholder.

SOURCES: Codes, 1942, § 3519-19; Laws, 1934, ch. 316; Laws, 1950, ch. 494, § 19, eff from and after July 1, 1950.

Cross References — Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

§ 21-27-33. Municipality may dispose of public utility systems.

All municipalities of the state are hereby empowered and authorized, if they so desire, to sell, lease, or otherwise dispose of any or all electric, water, gas or other municipally-owned public utility systems or properties on such terms and conditions, and with such safeguards as will best promote and protect the public interest. Said municipal corporations are empowered and authorized to transfer title to said public utility properties by warranty deed, bill of sale, contract, or lease, in the manner provided by law. However, notice of intention to make such sale, lease, or disposition of any such system, setting out the price and other general terms and conditions of such proposed sale, lease, or disposition shall be given by publication, once a week for three consecutive weeks in a legal newspaper published in such municipality, and if no such newspaper be published in said municipality, then in some newspaper having a general circulation in such municipality. After ten days from the last publication of such notice, the system may be disposed of, unless within ten days after the last publication of such notice a petition signed by not less than twenty per centum of the qualified voters of such municipality be filed, objecting to and protesting against such sale, lease, or disposition, in which event the same shall not be made unless submitted to a special election ordered for the purpose of determining whether a majority of those voting in such election shall vote for or against such sale, lease, or other disposition. Such election shall be ordered to be held not less than forty days after the date of the last notice of the proposed sale, lease or disposition. Notice of such election, stating the purpose of election, shall be published once each week for three consecutive weeks next preceding the time set for holding said election in such newspaper as herein provided. The laws governing special municipal elections shall govern the ordering and conduct of said election.

The ballots provided shall have plainly written or printed thereon the words "shall the waterworks, electric, or gas (as the case may be) system be sold, leased, or disposed of (as the case may be)" and below said words shall be suitably placed on separate lines, the words "yes" and "no," so that the voter may indicate the way he desires to vote on the question submitted.

If a majority of those voting in said election shall vote in favor of such sale, lease, or disposition, then the proper officer of the municipality may proceed to sell, lease or dispose of such system in accordance with the terms and conditions set out in the notice of proposed intention to sell, lease or dispose of such system, as herein provided. If such election is determined against such sale, lease or disposition of such system, then such system shall not be sold, leased or disposed of, but shall remain the property of the municipality.

SOURCES: Codes, 1930, § 2455; 1942, § 3519-24; Laws, 1924, ch. 196; Laws, 1950, ch. 494, § 24, eff from and after July 1, 1950.

Cross References — Definition of term "system," see § 21-27-11(b).

No impairment of the procedure prescribed by virtue of removal power of governing authorities, see § 21-27-15.

Use of proceeds from sale of public utility system, see § 21-27-35.

Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

A town may not enter into a contract to lease or sell its electric distribution system without approval of its qualified voters. Mississippi Power & Light Co. v. Town of Coldwater, 234 Miss. 615, 106 So. 2d 375 (1958), suggestion of error sustained, 234 Miss. 615, 112 So. 2d 222 (1958).

2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

Court could not specifically set forth and limit provisions of lease of manufacturing plant by municipality but was required to presume that public officials executing lease would take care that provisions would comply with statute. Albritton v. City of Winona, 181 Miss. 75, 178 So. 799, 115 A.L.R. 1436 (1938), appeal dismissed, 303 U.S. 627, 58 S. Ct. 766, 82 L. Ed. 1088 (1938).

ATTORNEY GENERAL OPINIONS

Town could enter into multi-year lease agreement to lease entire municipal natural gas pipeline to proposed lessee pursuant to Section 21-27-33 following procedure set forth therein. Rosenblatt, March 9, 1994, A.G. Op. #94-0104.

Section 21-17-1 does not apply to the sale of a public utility system under Section 21-27-33. Perkins, Nov. 1, 2002, A.G. Op. #02-0637.

Governing authorities of a city may sell municipal electric distribution properties under Section 21-27-33 under such terms and conditions and with such safeguards as will best promote and protect the public interest and may finance the deferred portion of the purchase price with a first deed of trust or irrevocable letter of credit, however, the city may not subordinate its lien on the property for the purchase money to any other property interest. Perkins, Nov. 1, 2002, A.G. Op. #02-0637.

Municipalities may extend water and sewer services to residents located in remote areas within the corporate limits; however, a town is not required to do so if same is not economically reasonable. Chandler, Apr. 1, 2005, A.G. Op. 05-0127.

A town may lease water system improvements to a private community water association in accordance with the provision of Section 21-27-33. While the lease is not required to be at fair market value, it must be under such terms and conditions and with such safeguards as will best promote and protect the public interest. Helmert, Oct. 28, 2005, A.G. Op. 05-0518.

RESEARCH REFERENCES

ALR. Power of municipality to sell, lease, or mortgage public utility plant or interest therein. 61 A.L.R.2d 595.

Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 549 et seq.

§ 21-27-35. Utilization of proceeds of sale of public utility system.

The governing authorities of any municipality which have sold or which may hereafter sell any utility system owned by such municipality, may use the proceeds of the sale of such system, or any part thereof, for the purpose of retiring and paying off any of the public debt of the municipality, and they may purchase the outstanding bonds or other obligations of the said municipality at such price, whether above or below par, as they may consider fair and reasonable. The said governing authorities may, in their discretion, invest the said funds, or any part thereof, derived from the sale of the said system or systems in any of the securities now eligible for purchase by public sinking funds of municipalities, at such price, whether above or below par, as they may determine to be fair and reasonable.

SOURCES: Codes, 1930, § 2550; 1942, § 3519-25; Laws, 1928, ch. 120; Laws, 1950, ch. 494, § 25, eff from and after July 1, 1950.

Cross References — Authority to sell public utility system, see § 21-27-33.
Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

§ 21-27-37. Inspection of utility authorized; penalty for violation.

The governing authorities of every municipality shall have power to inspect or cause to be inspected the machinery, appliances and premises of all persons, copartnerships or corporations owning or operating any system within their corporate limits, in order to ascertain whether or not the said machinery, appliances and premises are kept in a sanitary condition and in condition to comply with the terms and requirements of the franchise or franchises under which the said system or systems are operated.

If any person, copartnership or corporation, or any employee thereof, shall refuse to permit the municipal governing authorities to make such inspection immediately when requested so to do, they shall, for each such refusal, forfeit the sum of one thousand dollars, to be recovered in an action in the name of said municipality.

SOURCES: Codes, Hemingway's 1917, §§ 5890, 5891; 1930, §§ 2458, 2459; 1942, § 3519-27; Laws, 1910, ch. 147; Laws, 1950, ch. 494, § 27, eff from and after July 1, 1950.

Cross References — Testing water, electric light and gas meters, see § 21-27-9. Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

§ 21-27-39. Municipalities may furnish services to consumers outside corporate limits.

All municipalities owning or operating any system or systems may supply consumers residing outside of and within five (5) miles of the corporate limits of the municipality. In any county traversed by two (2) or more natural gas transmission lines and having therein two (2) or more natural gas compressor stations engaged in rendering service in interstate commerce, and wherein a natural gas transmission line of a municipality can be laid wholly in alluvial soil, where it is necessary for any municipality having a population of less than one thousand (1,000), according to the federal census of 1950, to construct a gas transmission line for a distance of more than five (5) miles but not more than eleven (11) miles from its corporate limits to the nearest point at which an adequate supply of natural gas can be obtained, and where there are not less than two hundred (200) prospective gas customers residing outside the corporate limits of such municipality but along and within one-half (½) mile of the gas transmission line so constructed by the municipality, then and in that event, the municipality may supply natural gas to such customers. Any municipality having its own natural gas transmission system in any county bordering the State of Alabama, in which U.S. Highway No. 78 and State Highway No. 25 intersect, and in which there is a publicly supported junior college, may extend its transmission lines and supply customers within the county for a distance of fifteen (15) miles from the corporate limits. Any municipality having a population of less than one thousand (1,000) people, according to the federal census of 1960, and being located in the county in which U.S. Highway 51 and U.S. Highway 82 intersect, and in the county where the main line of Illinois Central Railroad and Columbus and Greenville Railroad intersect, may construct a gas transmission line and supply customers within a four-county area for a distance of forty-five (45) miles from the corporate limits of the municipality. Any municipality having its own water distribution system, the construction or expansion of which has been financed in whole or in part by an agency of the United States government, and having a population of less than five hundred (500) persons, and located in a county in which Mississippi State Highways Number 12 and Number 429 intersect, may construct, expand and operate its water distribution system within the county or adjoining counties for a distance of fifteen (15) miles from the corporate limits. Any municipality having its own water distribution system, the construction or expansion of which has been financed in whole or in part by an agency of the United States government, and having a population of less than fifteen hundred (1500) persons, and located in a county in which Highway 15 and Highway 32 intersect and has a national forest, may construct, expand and operate its water distribution system within the county or adjoining counties for a distance of fifteen (15) miles from the corporate limits.

Any municipality having its own water distribution system and located in a county having two (2) judicial districts, and in which Mississippi Highways 17 and 35 intersect, may construct, expand and operate its water distribution system within the county or adjoining counties for a distance of fifteen (15) miles from the corporate limits. Any municipality having its own water distribution system, wherein U.S. Highway 51 and Mississippi Highway 35 intersect, and located in a county in which U.S. Highway 82 and Mississippi Highway 17 intersect, may construct, expand and operate its water distribution system within the county or adjoining counties for a distance of fifteen (15) miles from the corporate limits. Whenever such service shall be furnished to any consumer residing outside the corporate limits thereof, such consumer may not be charged at a rate greater than twice the rate charged for such services within the municipality.

Any municipality located within a county bordering the Mississippi River and in which Highways 49 and 61 intersect may acquire, construct, expand and operate its railroad transportation system for the transportation of passengers and freight for more than five (5) miles outside its corporate limits and outside the boundaries of the county in which it is located. Any municipality having a population of more than forty-five thousand (45,000) but less than forty-five thousand one hundred (45,100) according to the 1970 federal decennial census, may expand its motor vehicle transportation system for the transportation of passengers for more than five (5) miles outside its corporate limits.

Any municipality having a population of less than five hundred (500) according to the 1980 federal decennial census, being located north of U.S. Highway 82 in a county in which is located a United States Air Force base and a state-supported institution of higher learning established primarily for women, which criteria the Legislature finds to be conducive to the expansion of natural gas service to support contiguous areas of such Air Force base, may construct, own and/or operate a public utility or natural gas system and supply customers within the county for a distance of eleven (11) miles from the corporate limits.

SOURCES: Codes, Hemingway's 1917, § 5872; 1930, § 2452; 1942, § 3519-28; Laws, 1916, ch. 149; Laws, 1926, ch. 276; Laws, 1928, Ex. ch. 91; Laws, 1950, ch. 494, § 28; Laws, 1955, Ex. ch. 98; Laws, 1964, ch. 506; Laws, 1966, ch. 597, § 1; Laws, 1975, ch. 453; Laws, 1977, ch. 309; Laws, 1979, ch. 411, § 2; Laws, 1988, ch. 366; Laws, 1999, ch. 520, § 2, eff from and after July 1, 1999.

Cross References — Definition of the term "system," see § 21-27-11(b).

Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

JUDICIAL DECISIONS

1. In general.

Act was intended to exempt from regulation municipal utility systems which municipalities were authorized by law to operate on the effective date of the act and it also was intended to subject to regulation extensions of utilities more than one mile beyond the corporate boundaries when such extensions were made after the act's effective date; the commission thus had authority to regulate water rates for a newly-purchased water utility beyond one mile from the city's corporate limits, though the initial rate order was void on due process grounds for failure to give notice to the city prior to its issuance. Williams v. McAfee, 328 So. 2d 656 (Miss. 1976).

Where a city at the expense of property owners of the city constructed a sewer system and allowed owners of residences outside the city to use the facilities for a charge, these owners could not prevent the city from disconnecting its line from their line at the city limits to enforce the charge levied. Wells v. City of Jackson, 223 Miss. 228, 77 So. 2d 925 (1955).

ATTORNEY GENERAL OPINIONS

Town may extend water service to customers in county within five miles of corporate limits through main water line which is privately owned and may collect fees for this water service; municipality does not have duty to maintain water pressure in water lines which are privately owned and are not a part of municipal water system. Jones, Nov. 25, 1992, A.G. Op. #92-0850.

A municipality may acquire a water supply system that extends to an area within five miles of its corporate limits and may charge customers residing outside of the corporate limits rates up to twice that charged for residents inside the municipality so long as similarly situated persons are not discriminated against, but it may not acquire an entire system when part of that system extends more than five miles beyond the boundaries of the municipality. Tutor, Aug. 29, 1997, A.G. Op. #97-0400.

The governing authorities may set higher water rates for customers outside the corporate limits than for customers inside the corporate limits. Wood, April 3, 1998, A.G. Op. #98-0126.

Although the statute authorizes utility services to be extended beyond the municipal corporate limits, it has no application beyond the boundaries of the State of Mississippi; there is no authority which would permit a municipality to furnish utility services to out-of-state consumers residing within five miles of the municipal corporate limits. Snyder, August 7, 1998, A.G. Op. #98-0385.

As Senate Bill 3009, enrolled as Chapter 884, Local and Private Laws of Mississippi, 1988, neither expressly nor impliedly provides the City of Pontotoc an exclusive right to provide gas service to all of Pontotoc County, the Mississippi Public Service Commission, in its discretion, may award a Certificate of Public Convenience and Necessity for gas service to some utility other than the City of Pontotoc for areas in Pontotoc County that lie outside of the one-mile corridor and are not being served by the City of Pontotoc. McKinley, August 27, 1999, A.G. Op. #99-0437.

The present board of aldermen of a town could raise the rates of the former consumers of a water system association, even though the prior board of aldermen might have entered into a contract, by acceptance of a deed of conveyance of the assets of the water system association, to the contrary. Maxey, Jan. 11, 2002, A.G. Op. #01-0741.

There is no statutory authority for a municipality to make an investment in a county owned and operated water system which serves solely non-city residents and will not be of any benefit to the municipality. Youngman, Jan. 24, 2003, A.G. Op. #03-0028.

Municipal governing authorities may establish different classifications of users of municipal systems, and may establish different rates for those different classifications. Such classifications may be based on various factors, which may include extra expense related to providing service to customers residing outside the corporate boundaries of the municipality. Campbell, Oct. 20, 2003, A.G. Op. 03-0551.

A town is entitled to terminate or disconnect the sewer service to customers of the sewer system who are not paying their bills for such service. There must be some process by which customers may dispute questionable charges. Richardson, Feb. 2, 2004, A.G. Op. 04-0011.

If a town disconnects a sewer, it may be reconnected to the customers' septic tank. Richardson, Feb. 2, 2004, A.G. Op. 04-0011.

RESEARCH REFERENCES

ALR. Discrimination between property within and that outside municipality or other governmental district as to public service or utility rates. 4 A.L.R.2d 595.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 542.

§ 21-27-40. Contract for extension of natural gas transmission lines into, and service with, natural gas district.

(1) Any municipality having its own natural gas transmission system in any county bordering the State of Alabama in which U. S. Highway 78 and State Highway 25 intersect and in which there is a publicly supported junior college and which is authorized by Section 21-27-39, Mississippi Code of 1972, to extend its natural gas transmission lines may, in its discretion, enter into a contract for service with any natural gas district organized under the laws of this state, any part of which is located in said county. Such municipality may use such contract in determining the amount of funds available for the repayment of any bonds issued for this purpose in accordance with law.

(2) Said natural gas district may enter into a contract with said municipality to the extent of such municipality's authorization under Section 21-27-39, Mississippi Code of 1972, for the construction of gas transmission lines within such district and for supplying the customers within such district.

SOURCES: Laws, 1974, ch. 310, §§ 1, 2, eff from and after passage (approved Feb. 27, 1974).

Cross References — Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

RESEARCH REFERENCES

ALR. Discrimination between property within and that outside municipality or other governmental district as to public service or utility rates. 4 A.L.R.2d 595.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 542.

§ 21-27-41. Ordinance to be enacted before bonds are issued.

Whenever the governing authorities of any municipality shall determine to issue bonds pursuant to the authority granted in Section 21-27-23 to acquire or improve a system, it shall cause an estimate to be made of the cost of such system or improvement, and the fact that such estimate has been made shall appear in the ordinance authorizing the issuance of such bonds, which ordinance shall set forth a brief description in general terms of the contemplated system or improvement, the estimated life thereof, the said estimated cost thereof, the amount, date, denominations, rate of interest, times and places of payment and other details in connection with the issuance of the bonds, and such covenants and restrictions as may be necessary or desirable to safeguard the interests of the holders of the bonds.

SOURCES: Codes 1942, § 3519-10; Laws, 1934, chs. 316, 317; Laws, 1950, ch. 494, § 10; Laws, 1971, ch. 504, § 1, eff from and after passage (approved April 9, 1971).

Cross References — General powers of municipality to create, maintain and operate public utility system, see § 21-27-23.

Details of bonds, see § 21-27-45.

Issuance of bonds in municipalities of more than 100,000 population, see § 21-27-71.

Municipal bond issues generally, see §§ 21-33-301 et seq.

Refund on bonds not based on ad valorem tax, see § 31-15-21.

Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

Form of bonds for the Mississippi Home Corporation, see § 43-33-731.

Bonds' authorization, validation and provisions concerning electric service, see §§ 77-5-413 et seq.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 3519-10], which requires a recital that estimate has been made and a description of contemplated system and other details in connection with issuance of bonds, does not require that such recitals also appear in resolution of mayor and board of aldermen declaring intention to issue bonds or in notice of election. Spencer v. Mayor & Bd. of Aldermen, 215 Miss. 160, 60 So. 2d 562 (1952).

Where in a statute, which permits municipalities, after authorization by voters in special election to issue public utility improvement revenue bonds, there is a provision which states that no bond issue pursuant to acts should constitute an indebtedness within the meaning of any statutory or charter limitation, this was not unconstitutional. Spencer v. Mayor & Bd. of Aldermen, 215 Miss. 160, 60 So. 2d 562 (1952).

Where a constitutional provision requires ways to be made by general laws to prevent abuse by municipal corporations of powers of taxation contracting debts, and it is not self-executing, and it requires legislation to put into effect, it is the duty of the legislature to say what constitutes abuse of such powers of municipality, and to provide checks thereon. Spencer v. Mayor & Bd. of Aldermen, 215 Miss. 160, 60 So. 2d 562 (1952).

ATTORNEY GENERAL OPINIONS

Although there are no public notice or election requirements for a municipality to acquire a nonprofit water association's system, a municipality that issues bonds to acquire or improve a water supply system must comply with Miss. Code Section 21-27-41 et seq. Tutor, Aug. 29, 1997, A.G. Op. #97-0400.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations § 148.

18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, Counties, and other Political Subdivisions, Form 55 (public utility, seeking to enjoin issuance of bonds).

CJS. 64 C.J.S., Municipal Corporations §§ 2125, 2135, 2136.

§ 21-27-43. Electorate to vote on issuance of bonds.

Except as hereinafter provided, no bonds shall be issued pursuant to the authority granted in Section 21-27-23 until and unless a majority of those qualified electors of the municipality, voting on a proposition stating in general terms the maximum amount and purposes of the bonds, have approved the issuance at a special election called thereon according to law.

However, the requirement for an election to be held before the issuance of the bonds shall not apply to the issuance of the revenue bonds for the purpose of improving, repairing or extending any waterworks system, water supply system, sewage system, sewage disposal system (or the addition of a sewage disposal system to a sewage system), gas producing system, gas generating, transmission, or distribution system, electric generating, transmission, or distribution system, garbage disposal system, rubbish disposal or incinerator system, or motor vehicle transportation system, which is now, or hereafter, owned or operated by any municipality, or railroad transportation system owned or operated by any municipality located in a county bordering the Mississippi River and in which Highways 49 and 61 intersect. The revenue bonds may be issued for such purposes in the following manner: notice of intention to issue the revenue bonds, setting out the amount and other terms or conditions of the proposed issue, shall be given by publication once a week for three (3) consecutive weeks in a local newspaper published in the municipality, and if a newspaper is not published in the municipality, then in some newspaper having a general circulation in the municipality. After ten (10) days from the last publication of the notice, the bonds may be sold under the regular procedure for selling the bonds unless, within ten (10) days after the last publication of the notice, a petition signed by not less than twenty percent (20%) of the qualified voters of such municipality be filed objecting to and protesting against such revenue bond issue, in which event the same shall not be made unless submitted to a special election ordered for the purpose of determining whether or not a majority of those voting in the election shall vote for or against the revenue bond issue. The election shall be ordered to be held not later than forty (40) days after the date of the last notice of the proposed revenue bond issue. Notice of the election, stating the purpose of the election, shall be published once each week for three (3) consecutive weeks next preceding the time set for holding the election in the newspaper, provided in this section. The laws governing municipal elections shall govern the order and conduct of the election. However, nothing in this section shall prevent the governing authorities from calling an election, whether required by petition of twenty percent (20%) of the qualified voters or not. This section shall not have application to and it shall not affect the authority granted public utilities commissions under Section 21-27-25.

SOURCES: Codes, 1942, § 3519-13; Laws, 1934, ch. 317; Laws, 1936, ch. 186; Laws, 1942, ch. 231; Laws, 1950, ch. 494, § 13; Laws, 1958, ch. 529, § 4; Laws, 1999, ch. 520, § 4, eff from and after July 1, 1999.

Cross References — Refunding or consolidated bond issues, see § 21-27-51.

Issuance of bonds in municipalities of more than 100,000 population, see § 21-27-71.

Election being called prior to issuance of bonds generally, see § 21-33-307.

Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

JUDICIAL DECISIONS

1. In general.

Where in a statute, which, after authorization by voters in special election, permits municipalities to issue public utility improvement revenue bonds, there is a provision which states that no bond issue pursuant to acts should constitute an indebtedness within the meaning of any statutory or charter limitation, this was not unconstitutional. Spencer v. Mayor & Bd. of Aldermen, 215 Miss. 160, 60 So. 2d 562 (1952).

There is nothing in a statute that the power to issue bonds for the purpose of acquiring or improving any revenue producing public utility system and to issue revenue bonds for purpose of acquisition and improvement of such system is in any way contingent upon the creation of a commission to manage and control the system, and the municipal bond issue was not dependent upon validity of creation of public service commission. Spencer v. Mayor & Bd. of Aldermen, 215 Miss. 160, 60 So. 2d 562 (1952).

Notice of election on question of public utility improvement bonds should be sufficiently definite to apprise the voters with substantial accuracy of what they are called upon to approve and be submitted in such way as to obtain a full and fair expression of the will of the voters on its merits, and the duty of determining the particular phraseology in which the question shall be submitted is cast upon municipal authorities. Spencer v. Mayor & Bd. of Aldermen, 215 Miss. 160, 60 So. 2d 562 (1952).

This section [Code 1942, § 3519-13] by which public utility improvement bonds are to be issued requires only a majority of qualified electors voting on the proposition to vote in favor of the issuance of bonds. Spencer v. Mayor & Bd. of Aldermen, 215 Miss. 160, 60 So. 2d 562 (1952).

Where a constitutional provision requires ways to be made by general laws to prevent abuse by municipal corporations of powers of taxation contracting debts, and it is not self-executing, and it requires legislation to put into effect, it is the duty of the legislature to say what constitutes abuse of such powers of municipality, and to provide checks thereon. Spencer v. Mayor & Bd. of Aldermen, 215 Miss. 160, 60 So. 2d 562 (1952).

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations §§ 119-142.

CJS. 64 C.J.S., Municipal Corporations § 2057 et seq.

§ 21-27-45. Details of bonds; sale; fiscal advisor.

Such bonds as may be issued pursuant to the authority granted in Section 21-27-23 may be serial or term; redeemable, with or without premium, or nonredeemable; registered or coupon bonds with registration privileges as to either principal and interest, principal only or both. They shall bear interest at a rate to be determined pursuant to the sale of the bonds, and shall be payable at such time or times as shall be prescribed in the ordinance authorizing them. They shall mature at such time or times, not exceeding the said estimated life of the contemplated system or improvement, and in no event longer than thirty (30) years from their date, and at such place or places as shall be prescribed in the ordinance authorizing their issuance. Any provisions of the general laws to the contrary notwithstanding, any bonds and interest coupons issued pursuant to the authority granted in Section 21-27-23 shall possess all the qualities of negotiable instruments. The bonds and the interest coupons shall be executed in such manner and shall be substantially in the form prescribed in the authorizing ordinance. In case any of the officers whose signatures or countersignatures appear on the bonds or interest coupons shall cease to be such officers before delivery of such bonds, such signatures or countersignatures shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until such delivery. No bond shall bear more than one (1) rate of interest. Each bond shall bear interest from its date to its stated maturity date at the interest rate specified in the bid. All bonds of the same maturity shall bear the same rate of interest from date to maturity. All interest accruing on such bonds so issued shall be payable semiannually or annually, except that the first interest coupon attached to any such bond may be for any period not exceeding one (1) year.

No interest payment shall be evidenced by more than one (1) coupon and neither cancelled nor supplemental coupons shall be permitted. The lowest interest rate specified for any bonds issued shall not be less than seventy percent (70%) of the highest interest rate specified for the same bond issue. Such bonds shall be sold in such manner and upon such terms as the governing authorities of the municipality shall determine, provided that such bonds shall not bear a greater overall maximum interest rate to maturity than that allowed in Section 75-17-103, Mississippi Code of 1972, and the interest rate on any one (1) interest maturity shall not exceed the maximum interest rate allowed on such bonds. Each interest rate specified in any bid must be in multiples of one-eighth of one percent (⅛ of 1%) or in multiples of one-tenth of one percent (⅒ of 1%). If serial bonds, such bonds shall mature annually, and the first maturity date thereof shall not be more than five (5) years from the date of such bonds. Such bonds shall be legal investments for trustees and other fiduciaries, and for savings banks, trust companies and insurance companies organized under the laws of the state of Mississippi. The bonds and interest coupons shall be exempt from all state, county, municipal and other taxation under the laws of the state of Mississippi. The principal of and interest upon such bonds shall be payable solely for the revenues derived from the operation of the system acquired or improved with proceeds of the sale of such bonds. No bond issued pursuant to the authority granted in Section 21-27-23 shall constitute an indebtedness of a municipality within the meaning of any statutory or charter restriction, limitation or provision. It shall be plainly stated on the face of each such bond in substance that the same has been issued pursuant to the authority granted in Section 21-27-23 and that the taxing power of the municipality issuing the same is not pledged to the payment of such bond or interest thereon, and that such bond and the interest thereon are payable solely from the revenues of the system to acquire or improve which such bond is issued.

Such bonds shall be sold on sealed bids at public sale in the manner provided by Section 31-19-25. In the event the issuing municipality shall have received a commitment from any agency of the United States of America for the purchase of all or any portion of an issue of such bonds prior to the sale thereof or for financial assistance in providing debt service on such bonds, then, and in such event, said issue or any part thereof may be sold to the United States of America or any agency thereof at private sale. Provided, however, no bonds issued under the authority of Section 21-27-23 shall bear an overall maximum interest rate greater than that allowed in Section 75-17-103, Mississippi Code of 1972.

It is specifically provided that any bond issue to be awarded and sold to the United States of America or any agency thereof shall mature at such time or times, not to exceed thirty-five (35) years, as shall be prescribed in the ordinance of the municipality authorizing their issuance.

It is specifically provided that any bond issue to be awarded and sold to the United States of America or any agency thereof may be issued as one or more amortized bonds without coupons, may be dated the date of delivery thereof, and the purchase price for such bond or bonds may be delivered in multiple advances, with interest to accrue on the principal advanced form the date of each such advance. The amount of each such advance and the date thereof shall be registered on the reverse of each such bond and attested by the manual signature of the clerk of the municipality.

On issues of Five Million Dollars ($5,000,000.00) or more, the governing authorities of a municipality may retain the services of a fiscal advisor to assist in the sale of bonds hereunder and pay to such fiscal advisor a fee not to exceed the following amount: Twenty-Five Thousand Dollars ($25,000.00) plus one-quarter of one percent (¼ of 1%) of the amount of the issue in excess of Five Million Dollars ($5,000,000.00). No such fiscal advisor shall be eligible to bid for or participate in the underwriting of the bonds for which he acted as advisor.

Before a person can qualify as a fiscal advisor under the terms of this section, he shall have been actively engaged in the business of fiscal counseling for municipalities, or the underwriting of municipal bonds, for a period of five (5) years prior to qualifying under this section. A partnership or corporation may become a fiscal advisor hereunder with the same qualifications. Such person, corporation, or partnership shall have had prior experience as a fiscal advisor or been involved in the underwriting or investing in bonds of the state of Mississippi, or one or more of the subdivisions thereof, and such person, partnership or corporation shall be recognized in the fiscal community as a reputable and qualified fiscal advisor.

SOURCES: Codes, 1942, § 3519-10; Laws, 1934, chs. 316, 317; Laws, 1950, ch. 494, § 10; Laws, 1971, ch. 504, § 1; Laws, 1972, ch. 470, § 1; Laws, 1975, ch. 302; Laws, 1975, ch. 418; Laws, 1976, ch. 393; Laws, 1977, ch. 466; Laws, 1978, ch. 495, § 1; Laws, 1979, ch. 458; Laws, 1980, ch. 523, § 3; Laws, 1981, ch. 462, § 3; Laws, 1982, ch 434, § 5; Laws, 1983, ch. 541, § 9, eff from and after passage (approved April 25, 1983).

Cross References — Requirement that ordinance be enacted before bonds issued, see § 21-27-41.

Default on public utility bonds, see § 21-27-53.

Issuance of bonds in municipalities of more than 100,000 population, see § 21-27-71.

Municipal bond issues generally, see §§ 21-33-301 et seq.

Employment of fiscal advisor in connection with borrowing in anticipation of confirmed federal grants or loans, see § 21-33-326.

Refund on bonds not based on ad valorem tax, see § 31-15-21.

Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

Bond issue for improving athletic stadium, see § 37-119-7.

Form of bonds for the Mississippi Home Corporation, see § 43-33-731.

Bonds' authorization, validation and provisions concerning electric service, see §§ 77-5-413 et seq.

Issuance of bonds by municipalities and joint agencies joining to furnish electric power, see §§ 77-5-709, 77-5-737 et seq.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 3519-10], which requires a recital that estimate has been made and a description of contemplated system and other details in connection with issuance of bonds, does not require that such recitals also appear in resolution of mayor and board of aldermen declaring intention to issue bonds or in notice of election. Spencer v. Mayor & Bd. of Aldermen, 215 Miss. 160, 60 So. 2d 562 (1952).

Where in a statute, which, after authorization by voters in special election, permits municipalities to issue public utility improvement revenue bonds, there is a provision which states that no bond issue pursuant to acts should constitute an indebtedness within the meaning of any statutory or charter limitation, this was not unconstitutional. Spencer v. Mayor & Bd. of Aldermen, 215 Miss. 160, 60 So. 2d 562 (1952).

Where a constitutional provision requires ways to be made by general laws to prevent abuse by municipal corporations of powers of taxation contracting debts, and it is not self-executing, and it requires legislation to put into effect, it is the duty of the legislature to say what constitutes abuse of such powers of municipality, and to provide checks thereon. Spencer v. Mayor & Bd. of Aldermen, 215 Miss. 160, 60 So. 2d 562 (1952).

§ 21-27-47. Utilization of revenues of system to pay off bonds.

Any municipality having outstanding bonds issued pursuant to the authority granted in Section 21-27-23 shall maintain rates for all the services and facilities afforded by any system, the revenues of which are pledged to the payment of such bonds, which rates shall be sufficient at all times to maintain an interest and bond redemption fund sufficient to pay the interest on and principal of such bonds as and when the same become due and payable and, if so provided in the ordinance authorizing such bonds, to accumulate a reserve in such fund, and to provide for the payment of such cost of operation and maintenance as may be necessary to keep such system at all times in good repair and working order. Such rates shall be fixed by separate ordinance precedent to or at the time of the issuance of such bonds and shall be revised from time to time so as to produce the amounts necessary to provide for the foregoing. Bonds issued pursuant to the authority granted in Section 21-27-23 to acquire or improve a system shall be secured by a pledge of an amount of the gross revenues of such system sufficient to maintain such an interest and bond redemption fund. However, if there are then outstanding bonds to the payment of which the revenues of a system have been previously pledged, then, until said outstanding bonds have been retired, bonds issued to improve such system shall be secured by a pledge of the revenues of the system in such an amount only after deductions have been made for servicing the said outstanding bonds and for maintaining and operating the system. Notwithstanding the above provisions, all revenue bonds issued for a specific utility may be issued on an equivalent basis, provided that each and every ordinance authorizing each and every bond issued shall clearly state the basis on which future revenue bond issues shall be provided for in order to place them on an equivalent basis with prior issues.

SOURCES: Codes, 1942, § 3519-11; Laws, 1934, chs. 316, 317; Laws, 1950, ch. 494, § 11; Laws, 1958, ch. 529, § 3.

Cross References — Definitions regarding public utilities, see §§ 21-27-11 and 77-3-3 et seq.

Municipalities furnishing services to consumers outside corporate limits, see § 21-27-39.

Issuance of bonds in municipalities of more than 100,000 population, see § 21-27-71.

Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

RESEARCH REFERENCES

ALR. Discrimination between property within and that outside municipality or other governmental district as to public service or utility rates. 4 A.L.R.2d 595.

§ 21-27-49. Services of system may be used by municipality.

Whenever any municipality shall issue any bonds or other evidence of indebtedness which are payable solely from revenues to be derived from any system, the governing authorities of such municipality may, by appropriate provision in the ordinance or resolution authorizing the issuance of such bonds, or by separate resolution or ordinance passed at or prior to the actual sale of such bonds, bind and obligate such municipality to take, for a period not exceeding the full term of such bonds, at least a stated minimum of the services to be afforded by such system and to pay, out of its corporate funds, a least a stated minimum price therefor. Such provision, resolution or ordinance shall constitute a contract between such municipality and all the holders of such bonds.

All such agreements heretofore entered into by any such municipality, whether such bonds have actually been delivered and paid for or not, are hereby ratified, approved and validated.

SOURCES: Codes, 1942, § 3519-23; Laws, 1936, ch. 283; Laws, 1950, ch. 494, § 23, eff from and after July 1, 1950.

Cross References — Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

§ 21-27-51. Refunding bonds; consolidated bonds.

Any municipality which shall have issued bonds pursuant to the authority granted in Section 21-27-23, all or any portion of which shall at any time hereafter remain outstanding and unpaid, is hereby authorized, in connection with the issuance of additional bonds hereunder, to issue refunding bonds for the purpose of taking up, paying and redeeming all such outstanding and unpaid bonds. Such refunding bonds and such additional bonds may be authorized and issued separately or may be consolidated into one issue. Such outstanding and unpaid bonds may be refunded without notice and without an election thereon, and such additional bonds may be refunded without notice and without an election except as provided in Section 21-27-43. The proceeds of any such consolidated bonds shall be used to take up, pay and redeem all of such outstanding and unpaid bonds, at their redemption price, and the balance of such proceeds shall be used and expended for the purposes for which the additional bonds were authorized to be issued. In the event any such outstanding bonds, by the terms thereof, shall be redeemable prior to maturity at the option of such municipality, then such option of redemption shall be exercised in the manner provided in such bonds, and the refunding bonds shall not be issued or delivered more than two calendar months in advance of the date upon which such outstanding bonds shall have been called for redemption. In the event that such outstanding bonds, by the terms thereof, be not so redeemable prior to maturity, then the refunding bonds shall not be issued, except concurrently with the surrender and cancellation of a like amount of the bonds to be refunded thereby. All bonds issued under the provisions of this section shall have like incidents and shall be payable from the same source or sources and the payment thereof shall be secured in like manner as are bonds issued pursuant to the authority granted in Section 21-27-23. In lieu of selling such portion of such consolidated bonds, as may be required to provide for the redemption of such outstanding bonds, such consolidated bonds may be issued and delivered in exchange for and upon surrender and cancellation of a like amount of the bonds to be refunded thereby.

SOURCES: Codes, 1942, § 3519-09; Laws, 1942, ch. 231; Laws, 1950, ch. 494, § 9; Laws, 1958, ch. 529, § 2.

Cross References — Default on bonds, see § 21-27-53.

Bonds being called for payment, see § 21-27-55.

Disposition of revenues of system, see § 21-27-57.

Use of surplus funds, see § 21-27-61.

Penalty for failing to set aside trust funds, see § 21-27-65.

Refund on bonds not based on ad valorem tax, see § 31-15-21.

Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

Issuance of refunding bonds by municipalities joining to furnish electric power, see § 77-5-757.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 644 et seq.

64 Am. Jur. 2d, Public Securities and Obligations §§ 198 et seq.

CJS. 64 C.J.S., Municipal Corporations §§ 2127, 2128.

§ 21-27-53. Default on bonds.

The holder of any bond or any interest coupon issued pursuant to the authority granted in Sections 21-27-23 and 21-27-51 may, by suit, action, mandamus or other proceedings at law or in equity, enforce and compel performance by the appropriate official or officials of the municipality of any or all acts and duties to be performed by such municipality under the provisions of Sections 21-27-11 through 21-27-69 and the ordinance authorizing the issuance of such bond or interest coupon. If there be any default in the payment of the interest on and principal of any of said bonds, any court having jurisdiction in the proper action may, upon petition of the holder of any of such bonds, appoint a receiver to administer and operate the system with power to fix rates and collect charges sufficient to provide for the payment of all bonds outstanding to the payment of which the revenues of such system are pledged and to pay the expenses of operating and maintaining such system and to apply the revenues of such system, all in conformity with the provisions of Sections 21-27-11 through 21-27-69 and of the ordinance authorizing the issuance of such bonds.

SOURCES: Codes, 1942, § 3519-12; Laws, 1934, ch. 317; Laws, 1950, ch. 494, § 12, eff from and after July 1, 1950.

Cross References — Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

RESEARCH REFERENCES

ALR. Payment of attorneys' services in defending action brought against officials individually as within power or obligation of public body. 47 A.L.R.5th 553.

§ 21-27-55. Bonds may be called.

The governing authorities of any municipality authorizing revenue bonds pursuant to the authority granted in Sections 21-27-23 and 21-27-51, may make provisions for any of such revenue bonds to be called for payment at any interest payment date before maturity, provided the municipality shall have on hand in its bond and interest fund sufficient moneys, not otherwise appropriated or pledged, in excess of the interest and principal requirements within the next two succeeding calendar, operating or fiscal years.

SOURCES: Codes, 1942, § 3519-20; Laws, 1934, ch. 316; Laws, 1950, ch. 494, § 20, eff from and after July 1, 1950.

Cross References — Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

§ 21-27-57. Disposition of revenues.

In the authorizing order or ordinance, the governing authorities of the municipality shall set aside monthly and shall pledge the revenues of the system or combined system, in separate and special funds as follows: (1) operation and maintenance fund; (2) depreciation fund; (3) bond and interest fund; (4) contingent fund. A sufficient amount shall be set aside each year for the retirement of the bonds and interest. Any surplus revenue remaining shall be disposed of by the governing authorities of the municipality as they may determine from time to time for the best interest of the municipality. However, in the segregation into the several funds the governing authorities may prescribe a reasonable excess amount to be placed in the revenue bond and interest fund from time to time during the earlier years of maturity of such bonds so as to thereby provide and produce a cushion fund to meet any possible deficiencies therein in future years. In the event such excess amounts are provided in the earlier years, the same would be available for such purposes. Bonds pursuant to the authority granted in Sections 21-27-23 and 21-27-51, shall be payable solely from revenues of said project and out of the bond and interest fund.

SOURCES: Codes, 1942, § 3519-15; Laws, 1934, ch. 316; Laws, 1950, ch. 494, § 15, eff from and after July 1, 1950.

Cross References — Disposition of revenues by public utility commission, see § 21-27-19.

General revenues being used for operation and maintenance of public utilities, see § 21-27-59.

Contracts and liens not being impaired by segregation of revenues, see § 21-27-63.

Investment of municipality's surplus funds, see § 21-33-323.

Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

ATTORNEY GENERAL OPINIONS

Revenue bonds must be satisfied in full pursuant to §§ 21-27-19, 21-27-61 and this section prior to declaring a surplus in a fiscal year. However, in the alternative, a bond sinking fund would have to be established and sufficiently funded to pay all bonds and interest as they become due in the future. If this second option is satisfied and all other obligations of the system are satisfied, any remaining surplus funds may be transferred to the governing authority of the municipality to deposit in the municipal general funds. Neeld, May 28, 2004, A.G. Op. 04-0184.

§ 21-27-59. General revenues may be used for operation and maintenance of system.

Nothing in Sections 21-27-11 through 21-27-69 shall be construed to prohibit the municipality from appropriating and using any part of its available income or revenues derived from any source other than from the operation of such system or combined system in paying any immediate expenses of operation and/or maintenance of any such system or combined system. Nothing in Sections 21-27-11 through 21-27-69 shall be construed, however, to require the municipality to do so.

SOURCES: Codes, 1942, § 3519-16; Laws, 1934, ch. 316; Laws, 1950, ch. 494, § 16, eff from and after July 1, 1950.

Cross References — Disposition of systems' revenues by public utility commission, see § 21-27-19.

Disposition of systems' revenues by municipality's governing authorities, see § 21-27-57.

Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

§ 21-27-61. Distribution of revenues and surplus; minutes of municipal governing authorities.

The governing authorities of any municipality shall devote all monies of the system derived from any source other than the issuance of bonds for purposes authorized by the laws of the State of Mississippi, to or for the payment of all operating expenses, including such items as are normally required of utilities for sales development; to or for the payment of all bonds and interest on outstanding revenue bonds, if any, of such system; to or for the acquisition and improvement of the system contingencies; to or for the payment of all other obligations incurred in the operation and maintenance of the system and the furnishing of service; and to or for the creation and maintenance of a cash working fund or a surplus fund to be used for replacement, extension of systems and emergencies. The balance of any monies, including but not limited to, any which have heretofore been classified as revenues or surplus of such system, if any, may be used for any lawful, municipal purpose and may be paid to the governing authorities of the municipality for distribution to the various municipal funds or may be disbursed for such purpose by the governing authorities at their direction. The purpose of any allocation or expenditure of money made pursuant to this section shall be spread upon the minutes of the municipal governing authorities.

SOURCES: Codes, 1942, § 3519-17; Laws, 1934, ch. 316; Laws, 1950, ch. 494, § 17; Laws, 1990, ch. 435, § 1, eff from and after passage (approved March 19, 1990).

Cross References — Investment of municipality's surplus funds, see § 21-33-323. Sale of excess capacity or output by municipalities and joint agencies joining to furnish electric power, see §§ 77-5-711 and 77-5-731.

ATTORNEY GENERAL OPINIONS

While the statute is not explicit in setting out the order of priority of the last three funds for surplus transfer, it is apparent that the order of the funds as set out in the statute is the order of priority which should be followed by the governing authority of a municipality when making a transfer of surplus funds. Criss, October 30, 1998, A.G. Op. #98-0651.

A municipality is authorized to transfer funds from its water department to other municipal departments provided all obligations of the system are satisfied. Blocker, Mar. 28, 2003, A.G. Op. #03-0134.

Revenue bonds must be satisfied in full pursuant to §§ 21-27-19, 21-27-57 and this section prior to declaring a surplus in a fiscal year. However, in the alternative, a bond sinking fund would have to be established and sufficiently funded to pay all bonds and interest as they become due in the future. If this second option is satisfied and all other obligations of the system are satisfied, any remaining surplus funds may be transferred to the governing authority of the municipality to deposit in the municipal general funds. Neeld, May 28, 2004, A.G. Op. 04-0184.

§ 21-27-63. Contracts and liens not impaired.

Nothing in Sections 21-27-11 through 21-27-69 shall be construed as authorizing any municipality to impair or commit a breach of the obligation of any valid lien or contract created or entered into by it, the intention hereof being to authorize the pledging, setting aside and segregation of gross revenue only where consistent with outstanding obligations of such municipality.

SOURCES: Codes, 1942, § 3519-21; Laws, 1934, ch. 316; Laws, 1950, ch. 494, § 21, eff from and after July 1, 1950.

Cross References — Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

§ 21-27-65. Penalty for failing to set aside trust funds.

If, after the governing authorities of any municipality have issued revenue bonds pursuant to the authority granted in Sections 21-27-23 and 21-27-51, said governing authorities fail or refuse to carry out their duties with reference to setting aside the trust funds, said officers shall be guilty of a misdemeanor and, upon trial and conviction, shall be removed from office.

SOURCES: Codes, 1942, § 3519-22; Laws, 1934, ch. 316; Laws, 1950, ch. 494, § 22, eff from and after July 1, 1950.

Cross References — Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

§ 21-27-67. Construction of sections.

Sections 21-27-11 through 21-27-69, being necessary for and to secure the public health, safety, convenience and welfare of the municipalities of the State of Mississippi, shall be liberally construed to effect the purposes hereof.

The powers conferred by Sections 21-27-11 through 21-27-69 shall be in addition to the powers conferred by any other law, general, special or local, and such sections shall, without reference to any other statute or to any charter, be deemed full authority to purchase or improve and to own and operate the authorized revenue producing systems, to fix, maintain, and to collect rates for the facilities afforded by such systems, to issue and to sell the authorized bonds, and shall be construed as an additional and alternative method therefor, any provisions of the general laws of the state or of any charter to the contrary notwithstanding.

SOURCES: Codes, 1942, §§ 3519-13, 3519-29; Laws, 1934, ch. 317; Laws, 1936, ch. 186; Laws, 1942, ch. 231; Laws, 1950, ch. 494, §§ 13, 29; Laws, 1958, ch. 529, § 4.

Cross References — Electorate to vote on issuance of bonds, see § 21-27-43.
Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

§ 21-27-69. Obligations under repealed laws remain valid.

The repeal heretofore of any law authorizing a municipality to borrow money and issue bonds to acquire or improve any system shall not affect the validity of any bonds issued or contracts entered into under the provisions of any such repealed laws.

SOURCES: Codes, 1942, § 3519-30; Laws, 1950, ch. 494, § 30, eff from and after July 1, 1950.

Cross References — Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

§ 21-27-71. Issuance of bonds in municipalities of more than one hundred thousand population.

Whenever the governing authorities of any municipality of more than One Hundred Thousand (100,000) population shall determine to issue bonds under the provisions of Sections 21-27-11 through 21-27-69, to acquire or improve a system, it shall cause an estimate to be made of the cost of such system or improvement, and the fact that such estimate has been made shall appear in the ordinance authorizing the issuance of such bonds, which ordinance shall set forth a brief description in general terms of the contemplated system or improvement, the estimated life thereof, the said estimated cost thereof, the amount, date, denominations, rate of interest, times and places of payment and other details in connection with the issuance of the bonds, and such covenants and restrictions as may be necessary or desirable to safeguard the interest of the holders of the bonds. Such bonds may be serial or term; redeemable, with or without premium, or nonredeemable; registered or coupon bonds with registration privileges as to either principal and interest, principal only or both. They shall bear interest at a rate to be determined pursuant to the sale of the bonds, and shall be payable at such time or times as shall be prescribed in the ordinance authorizing them. They shall mature at such time or times, not exceeding the said estimated life of the contemplated system or improvement, and in no event exceeding thirty (30) years from their date, and at such place or places as shall be prescribed in the ordinance authorizing their issuance; provided, however, that any bond issue to be awarded and sold to the United States of America or any agency thereof shall mature at such time or times, not to exceed thirty-five (35) years, as shall be prescribed in the ordinance authorizing their issuance. Any provisions of the general laws to the contrary notwithstanding, any bonds and interest coupons issued pursuant to the authority of this section shall possess all the qualities of negotiable instruments. The bonds and the interest coupons shall be executed in such manner and shall be substantially in the form prescribed in the authorizing ordinance. In case any of the officers whose signatures or countersignatures appear on the bonds or interest coupons shall cease to be such officers before delivery of such bonds, such signatures or countersignatures shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until such delivery. No bond shall bear more than one (1) rate of interest. Each bond shall bear interest from its date to its stated maturity date at the interest rate specified in the bid. All bonds of the same maturity shall bear the same rate of interest from date to maturity. All interest accruing on such bonds so issued shall be payable semiannually or annually, except that the first interest coupon attached to any such bond may be for any period not exceeding one (1) year.

No interest payment shall be evidenced by more than one (1) coupon and neither cancelled nor supplemental coupons shall be permitted. The lowest interest rate specified for any bonds issued shall not be less than seventy percent (70%) of the highest interest rate specified for the same bond issue. Such bonds shall be sold in such manner and upon such terms as the governing authorities of the municipality shall determine, provided that such bonds shall not bear a greater overall maximum interest rate to maturity than that allowed in Section 75-17-103, Mississippi Code of 1972, and the interest rate on any one (1) interest maturity shall not exceed the maximum interest rate allowed on such bonds. If serial bonds, such bonds shall mature annually, and the first maturity date thereof shall not be more than five (5) years from the date of such bonds. Such bonds shall be legal investments for trustees and other fiduciaries, and for savings banks, trust companies and insurance companies organized under the laws of the state of Mississippi. The bonds and interest coupons shall be exempt from all state, county, municipal and other taxation under the laws of the state of Mississippi. The principal of and interest upon such bonds shall be payable solely from the revenues derived from the operation of the system acquired or improved with proceeds of the sale of such bonds. No bond issued pursuant to this section shall constitute an indebtedness of a municipality within the meaning of any statutory or charter restriction, limitation or provision. It shall be plainly stated on the face of each such bond in substance that the same bond has been issued under the provisions of this section and that the taxing power of the municipality issuing the same is not pledged to the payment of such bond or interest thereon, and that such bond and interest thereon are payable solely from the revenues of the system to acquire or improve which such bond is issued.

Such bonds shall be sold on sealed bids at public sale in the manner provided by Section 31-19-25. In the event the issuing municipality shall have received a commitment from any agency of the United States of America for the purchase of all or any portion of an issue of such bonds prior to the sale thereof or for financial assistance in providing debt service on such bonds, then, and in such event, said issue or any part thereof may be sold to the United States of America or any agency thereof at private sale. Bonds in the aggregate amount of Two Hundred Thousand Dollars ($200,000.00) for any project may be sold at private sale either to underwriters or investors.

On issues of Five Million Dollars ($5,000,000.00) or more, the governing authorities of a municipality may retain the services of a fiscal advisor to assist in the sale of the bonds hereunder and pay to such fiscal advisor a fee not to exceed the following amount: Twenty-Five Thousand Dollars ($25,000.00) plus one-quarter of one percent (¼ of 1%) of the amount of the issue in excess of Five Million Dollars ($5,000,000.00). No such fiscal advisor shall be eligible to bid for or participate in the underwriting of the bonds for which he acted as advisor.

Before a person can qualify as a fiscal advisor under the terms of this section, he shall have been actively engaged in the banking business, or the business of fiscal counseling for municipalities, or the underwriting of municipal bonds, for a period of five (5) years prior to qualifying under this section. A partnership or corporation may become a fiscal advisor hereunder with the same qualifications. Such person, corporation, or partnership shall have had prior experience as a fiscal advisor or been involved in the underwriting or investing in bonds of the state of Mississippi, or one or more of the subdivisions thereof, and such person, partnership or corporation shall be recognized in the fiscal community as a reputable and qualified fiscal advisor.

SOURCES: Codes, 1942, § 3519-31.5; Laws, 1971, ch. 473, § 1; Laws, 1980, ch. 523, § 3; Laws, 1981, ch. 494, § 1; Laws, 1982, ch. 434, § 6; Laws, 1983, ch. 541, § 10, eff from and after passage (approved April 25, 1983).

Cross References — Issuance of municipal bonds generally, see §§ 21-33-301 et seq.

Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

§ 21-27-73. Contract for purchase of supply of natural gas from any public nonprofit corporation for up to 10 years.

The governing authority of any municipality that owns and operates a gas distribution system, as defined in Section 21-27-11(b), and the governing authority of any public natural gas district are authorized to contract for the purchase of the supply of natural gas for a term of up to ten (10) years with any public nonprofit corporation which is organized under the laws of this state or any other state.

SOURCES: Laws, 2004, ch. 560, § 1, eff from and after passage (approved May 14, 2004.)

REPRODUCTION AND DESTRUCTION OF RECORDS OF MUNICIPALLY-OWNED UTILITIES

Sec.
21-27-91. Definitions.
21-27-93. General grant of authority.
21-27-95. Reproduction of records.
21-27-97. Destruction of records; admissibility of reproductions, copies, facsimiles, etc.
21-27-99. Reproductions to be confidential and privileged if original records are likewise.
21-27-101. Expenses in reproduction of records.
21-27-103. Repealed.

§ 21-27-91. Definitions.

Whenever used in Sections 21-27-91 through 21-27-103:

(a) The term "municipality" shall be defined as it is in subdivision (a) of Section 21-27-11;

(b) The term "system" shall be defined as including any waterworks system, water supply system, sewage system, sewage disposal system, or any combination thereof, including any combined waterworks and sewage system, consisting of an existing waterworks system or water supply system or both, combined with an existing sewage system or sewage disposal system or both, or consisting of an existing waterworks system or water supply system or both, combined with a sewage system or sewage disposal system or both, to be acquired, or consisting of an existing sewage system or sewage disposal system or both, combined with a waterworks system or water supply system or both, to be acquired, gas producing, generating, transmission or distribution system, or any one or all thereof, electric generating, transmission, or distribution system, garbage disposal system, rubbish disposal system, and incinerators, and all parts and appurtenances thereof.

SOURCES: Codes, 1942, § 3519-41; Laws, 1956, ch 395, § 1.

Editor's Note — Section 21-27-103 referred to in this section was repealed by Laws, 1995, ch. 447, § 15, eff from and after July 1, 1995.

Cross References — Public Utilities commission, see §§ 21-27-11 through 21-27-21.

General powers of municipality as to creation, maintenance, and operation of public utility systems, see § 21-27-23.

§ 21-27-93. General grant of authority.

The governing authorities of any municipality which now owns and operates any system or systems, but which has not adopted and set up a public utility commission as provided in Section 21-27-13, and the public utility commission of such municipalities that have adopted and set up a public utility commission as provided in said section, are authorized and vested with the authority to microfilm, photograph, photostat, or otherwise reproduce records of the municipally-owned utilities of such municipality. However, the destruction or disposal of any books containing the minutes of any municipal board or of any municipal public utility commission, contracts in effect, real estate deeds, or records showing the date of acquisition, depreciation, or disposition of capital assets, is not hereby authorized.

SOURCES: Codes, 1942, § 3519-42; Laws, 1956, ch. 395, § 2; Laws, 1995, ch. 447, § 9, eff from and after July 1, 1995.

Cross References — Preservation of municipal records generally, see § 21-15-35.

Definitions concerning the records of municipally-owned utilities, see § 21-27-91.

Records being reproduced by service contract or by purchase of duplicating equipment and supplies, see § 21-27-95.

RESEARCH REFERENCES

Am Jur. 66 Am. Jur. 2d, Records and Recording Laws §§ 60-63.

CJS. 76 C.J.S., Records §§ 13, 15.

§ 21-27-95. Reproduction of records.

Any municipality or public utility commission desiring to reproduce by microfilm, photograph, photostat or other process, the records of municipal system or systems under the authority granted in Section 21-27-93 are authorized and vested with the authority to purchase or acquire any equipment, materials and supplies necessary therefor, or to contract for the reproducing of said records in accordance with Section 31-7-1 et seq. Any such contract shall not exceed a period of twelve (12) months.

SOURCES: Codes, 1942, § 3519-43; Laws, 1956, ch. 395, § 3; Laws, 1980, ch. 440, § 19, eff from and after January 1, 1981.

Cross References — Reproduction of municipal records generally, see § 21-15-37.

Definitions concerning the records of municipally-owned utilities, see § 21-27-91.

Public purchases generally, see §§ 31-7-1 et seq.

RESEARCH REFERENCES

ALR. Requirement that public contract be awarded on competitive bidding as applicable to contract for public utility. 81 A.L.R.3d 979.

§ 21-27-97. Destruction of records; admissibility of reproductions, copies, facsimiles, etc.

Any reproduction or copy of any original record shall be deemed to be the original record for all purposes and shall be admissible as evidence in all courts or administrative agencies. A facsimile, exemplification or certified copy thereof shall, for all purposes set forth herein, be deemed to be a transcript, exemplification or certified copy of the original record.

SOURCES: Codes, 1942, § 3519-44; Laws, 1956, ch. 395, § 4; Laws, 1995, ch. 447, § 10, eff from and after July 1, 1995.

Cross References — Admissibility of business records and copies thereof, see Miss. R. Evid. 803 and 1001 through 1008.

Destruction of municipality's original records generally, see § 21-15-37.

§ 21-27-99. Reproductions to be confidential and privileged if original records are likewise.

When any of the records of which reproductions are made are declared by law, or are by their nature confidential and privileged records, then the reproduction thereof shall likewise be deemed to be confidential and privileged to the same extent as the original records.

SOURCES: Codes, 1942, § 3519-46; Laws, 1956, ch. 395, § 6.

§ 21-27-101. Expenses in reproduction of records.

The governing authorities of any municipality not operating with a public utility commission, is hereby authorized to pay all expenses incurred in reproducing such records and in making provision for the preservation, retention and storage of such reproductions from the general fund of such municipality. A municipal public utility commission shall pay for the same from the earnings of the municipally-owned utility or utilities.

SOURCES: Codes, 1942, § 3519-45; Laws, 1956, ch. 395, § 5.

§ 21-27-103. Repealed.

Repealed by Laws, 1995, ch. 447, § 15, eff from and after July 1, 1995.
[Codes, 1942, § 3519-47; Laws, 1956, ch. 395, § 7]

Editor's Note — Former § 21-27-103 related to records which could be destroyed without reproducing.

REGULATION OF TRANSPORTATION FARES

SEC.
21-27-121. General grant of authority.

§ 21-27-121. General grant of authority.

The governing authorities of municipalities shall have the power to fix the rates and charges of persons operating vehicles for the transportation of persons for compensation within the limits of the municipality. The authority granted by this section shall not apply, however, to railroads operated within or through such municipality.

SOURCES: Codes, 1892, § 2960; 1906, § 3356; Hemingway's 1917, § 5853; 1930, § 2433; 1942, § 3374-143; Laws, 1950, ch. 491, § 143, eff from and after July 1, 1950.

Cross References — Obtaining operator permit; appeal from refusal to grant permit, see § 21-27-151.

JUDICIAL DECISIONS

1. In general.

A nonexclusive franchise of a common carrier for passengers for hire is a valuable property right, and the carrier is entitled to relief by way of an injunction against a threatened or actual injury to his property rights through illegal competition of another common carrier of passengers for hire. Payne v. Jackson City Lines, 220 Miss. 180, 70 So. 2d 520 (1954).

A commercial carrier of passengers for hire in a municipality must obtain a franchise before the carrier can operate for those purposes. Payne v. Jackson City Lines, 220 Miss. 180, 70 So. 2d 520 (1954).

ATTORNEY GENERAL OPINIONS

Municipal "franchise" authority to grant permission and to regulate vehicle transportation for hire along public rights-of-way is regulated by Miss. Code Section 21-27-121. Mitchell, Apr. 23, 1993, A.G. Op. #93-0007.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Utilities §§ 99, 131 et seq.

CJS. 73B C.J.S., Public Utilities §§ 14-17 et seq.

LICENSING OF OPERATORS OF MOTOR VEHICLES FOR HIRE

SEC.
21-27-131. Obtaining permit; appeal from refusal to grant permit.
21-27-133. Owner or operator of motor vehicle for hire must carry liability insurance or bond; actions thereon.
21-27-135. Transfer of badge unlawful.
21-27-137. Revocation or suspension of permit.
21-27-139. Vehicle to be registered and numbered.
21-27-141. Penalty for violations.

§ 21-27-131. Obtaining permit; appeal from refusal to grant permit.

No person may drive or operate motor vehicles for hire in any city or town in this state unless he shall first have been licensed so to do as follows: he shall make application to the mayor of such municipality in writing, accompanied by a statement of some reputable citizen thereof, that the applicant is over the age of eighteen (18) years, an experienced driver, of good moral character, and physically and mentally capacitated to drive and operate such motor vehicle. The mayor shall place such application before the board of aldermen, or other governing authorities, whereupon inquiry may be made by such governing authorities into the moral character and mental and physical fitness of the applicant. If the permit shall be granted the applicant shall receive a certificate of such permit, signed by the mayor, together with an identification badge, and the name of the municipality thereon, and which shall be worn so that the same will be displayed while engaged in or about such occupation. The governing authorities of the municipality may require the applicant to give a reasonable bond, of not more than Five Hundred Dollars ($500.00), to guarantee the faithful observance of the law as well as the rules and regulations which may be prescribed by the said municipality, and they may also require a reasonable fee, for such permit and badge. In the event the governing authority of such municipality refuse to grant such permit to an applicant, an appeal may be taken to the circuit court, in the manner provided by law for appealing from other orders of the governing authorities of municipalities, and the questions to be tried upon appeal will be as to the age and experience and the moral, mental and physical fitness of the said applicant to pursue such vocation in such municipality.

SOURCES: Codes, 1930, § 5596; 1942, § 3495; Laws, 1922, ch. 217; Laws, 1994, ch. 459, § 1, eff from and after July 1, 1994.

Cross References — Local privilege taxes applying to automobiles for hire or rent, see § 27-17-35.

Regulation of transportation for hire, see § 21-27-121.

Penalties for violations, see §§ 21-27-137, 21-27-141.

Bus driver's obtaining permit, see § 21-27-151.

Fees and expiration dates of drivers' licenses, see §§ 63-1-43 et seq.

Revocation of driver's license, see § 63-1-51.

Requiring certificate of public convenience and necessity for intrastate operation, see § 77-7-41.

JUDICIAL DECISIONS

1. In general.

Permit to operate taxicabs in city constitutes a permit to do that which would otherwise be unlawful; and, being a mere personal privilege, it is revocable for due cause and is not a vested or property right in a constitutional sense. Allen v. City of Kosciusko, 207 Miss. 343, 42 So. 2d 388 (1949).

City has the right, and it is its duty, when, by reason of changed circumstances and conditions, the public safety reasonably requires it to amend its ordinances regulating the operations of taxicabs within the city, so long as, and to the extent that, said amended ordinance remains within the limits of the powers conferred on the municipality by the legislature. Allen v. City of Kosciusko, 207 Miss. 343, 42 So. 2d 388 (1949).

Validity of order revoking plaintiff's license to operate fleet of taxicabs in city without notice and hearing, became moot question and would not be determined where city subsequently enacted new ordinance revoking all permits and prescribing new requirements. Allen v. City of Kosciusko, 207 Miss. 343, 42 So. 2d 388 (1949).

Operator of fleet of taxicabs could not challenge constitutionality of ordinance revoking all taxicab permits and establishing new permit requirements, passed subsequent to revocation of his license without notice and hearing, where he did not apply for a permit under the new ordinance, and, therefore, he was unaffected thereby. Allen v. City of Kosciusko, 207 Miss. 343, 42 So. 2d 388 (1949).

This statute [Code 1942, § 3495] and an ordinance passed thereunder providing for a permit fee and licensing of motor vehicles for hire in a municipality to apply to drivers of taxicabs doing an interurban business, were not unconstitutional and void, such legislation being reasonable and valid in the exercise of the police power of the state for the public safety. Lowe v. Simmons, 185 Miss. 88, 187 So. 214 (1939).

Statutes authorizing municipalities to regulate the operation of motor vehicles for hire and ordinances thereunder requiring a license for such operation were applicable to drivers of taxicabs engaged in an interurban business. Lowe v. Simmons, 185 Miss. 88, 187 So. 214 (1939).

These statutes and the ordinances enacted thereunder regulating the operation of motor vehicles for hire in the municipality and providing for a charge of one dollar for a permit therefor were not revenue measures, but were the exercise of the police power in order to protect the public safety of people traveling upon the streets of the municipality. Lowe v. Simmons, 185 Miss. 88, 187 So. 214 (1939).

Statute empowering municipalities to require operators of motor vehicles for hire to give reasonable bond of not more than $500 to guarantee faithful observance of the law and municipal rules and regulations held not to exclude power of municipalities to require such operators to carry liability insurance. Brogan v. Hosey, 172 Miss. 869, 161 So. 690 (1935).

RESEARCH REFERENCES

ALR. Validity of statute, ordinance, or regulation forbidding granting of exclusive rights or franchises to, or abolishing existing exclusive rights secured pursuant to outstanding permits for, taxicab or hack stands. 8 A.L.R.2d 574.

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 11.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 461.

CJS. 53 C.J.S., Licenses §§ 16-19, 55.

§ 21-27-133. Owner or operator of motor vehicle for hire must carry liability insurance or bond; actions thereon.

No certificate or permit shall be issued by any municipality to the owner or operator of any motor vehicle owned or operated for hire in any city or town in this state, unless and until such owner or operator shall have filed with, and the same has been approved by, the governing authorities of the municipality, an insurance policy, or certificates of insurance in lieu thereof, issued by some insurance company authorized to transact business in this state, or bond or bonds, to be approved by the said governing authorities of the municipality, in an amount required by an ordinance of said municipality, conditioned to pay any final judgment against said owner or operator for personal injuries or property damages resulting from or arising out of the use, maintenance, or operation of the said motor vehicle. The amount of the insurance policy or bond required under this section on any motor vehicle of any such owner or operator shall in no case be less than ten thousand dollars for the death or injury to any one person, and subject to said limit for one person, twenty thousand dollars total public liability for any one accident and ten thousand dollars for property damage.

The insurance policy or bond, filed with the municipality as required by this section, shall contain a provision or indorsement to the effect that the same shall not be cancelled for any cause by either party thereto unless and until ten days' written notice thereof shall have been given to the said municipality.

In any action, whether in law or in equity, against any owner or operator, operating under the provisions of this section, the insurer, insurance company, or obligor in the policy of insurance or bond given by such owner or operator in compliance with this section, shall not be joined as a party to such suit and shall not be a proper party thereto, except as hereinafter provided.

The insurer, insurance company, or obligor, in any policy of insurance or bond filed in compliance with this section, shall be obligated to pay any final judgment obtained against such owner or operator as herein provided, regardless of the solvency, insolvency, bankruptcy, or receivership, of such owner or operator. In the event that the insured shall abandon his permit and leave the state, a claimant asserting his claim within the provisions of said insurance policy or bond may file suit against the insurer or insurance company or obligor issuing such insurance policy or executing such bond in a court of competent jurisdiction without the necessity of making the insured a party to said suit.

SOURCES: Codes, 1942, § 3495.5; Laws, 1958, ch. 506, §§ 1-5, eff July 1, 1958.

Cross References — Penalties for violations, see § 21-27-141.

JUDICIAL DECISIONS

1. In general.

The insurer of a taxicab was entitled to deny coverage to an injured individual on the ground that it was not notified of the accident as soon as practicable where, even though the policy was issued under a voluntary assigned risk plan, it was not subject to the statutory provision making the insurer's liability absolute. Hague v. Liberty Mut. Ins. Co., 571 F.2d 262 (5th Cir. 1978).

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. Pl & Pr Forms (Rev), Municipal, School, and State Tort Liability, Forms 121 et seq. (claim, injury involving motor vehicle).

41 Am. Jur. Proof of Facts 2d 239, Liability of Taxicab Company for Cabdriver's Negligence.

§ 21-27-135. Transfer of badge unlawful.

It shall be unlawful for any driver who secures such permit and badge to transfer such badge to any other driver, or for any person to use the badge of another person while driving or operating a motor vehicle for hire.

SOURCES: Codes, 1930, § 5597; 1942, § 3496; Laws, 1922, ch. 217.

Cross References — Penalties for violations, see § 21-27-141.
Transfer of bus driver's badge being unlawful, see § 21-27-153.

§ 21-27-137. Revocation or suspension of permit.

The governing authority of the municipality may revoke or suspend such permit and demand the return of such badge upon proof that the holder while driving, or while in charge of such motor vehicle:

(a) was intoxicated, or noticeably under the influence of intoxicating liquor; or,

(b) had disturbed the peace while so engaged; or,

(c) had recklessly disregarded the speed regulations prescribed by law; or,

(d) had been guilty of knowingly transporting intoxicating liquor; or,

(e) had carried concealed weapons in violation of law; or,

(f) had knowingly transported persons for the purpose of gaming or prostitution, or for the purpose of obtaining intoxicating liquor.

The said authority may by ordinance prescribe other reasonable rules and regulations governing the use and operation of motor vehicles for hire within the municipality, and cause the same to be observed by such driver or operator, under penalty of revocation or suspension of such permit. Any person whose permit to drive or operate a motor vehicle for hire has been suspended or revoked may appeal to the circuit court from such order in the manner provided for appeals from orders of the governing authority of municipalities, but such appeal shall not operate as a supersedeas of said order.

SOURCES: Codes, 1930, § 5598; 1942, § 3497; Laws, 1922, ch. 217.

Cross References — Penalties for violations, see § 21-27-141.
Revocation or suspension of bus driver's permit, see § 21-27-155.

JUDICIAL DECISIONS

1. In general.

Validity of order revoking plaintiff's license to operate fleet of taxicabs in city without notice and hearing, became moot question and would not be determined where city subsequently enacted new ordinance revoking all permits and prescribing new requirements. Allen v. City of Kosciusko, 207 Miss. 343, 42 So. 2d 388 (1949).

Permit to operate taxicabs in city constitutes a permit to do that which would otherwise be unlawful, and, being a mere personal privilege, it is revocable for due cause and is not a vested, or property right in a constitutional sense. Allen v.

City of Kosciusko, 207 Miss. 343, 42 So. 2d 388 (1949).

Statute authorizing municipalities to adopt necessary measures for protection of traveling public and to prescribe other reasonable rules and regulations governing use and operation of motor vehicles for hire held sufficiently broad to include power to require operators of taxicabs to carry liability insurance. Brogan v. Hosey, 172 Miss. 869, 161 So. 690 (1935).

§ 21-27-139. Vehicle to be registered and numbered.

The owner of any motor vehicle operated for hire in any city or town in this state, shall before causing the same to be operated, register the said vehicle with the clerk of such municipality, in the name of the owner, with the number of motor, and number of license tag for that year. The clerk shall keep said registration in a book kept for that purpose and give a number to such vehicle, which the owner shall cause to be painted or stenciled on two sides of the said vehicle. Such number shall not be required to be changed at subsequent registrations.

Such vehicle shall be reregistered on or before the first day of February each year.

SOURCES: Codes, 1930, § 5599; 1942, § 3498; Laws, 1922, ch. 217.

Cross References — Penalties for violations, see § 21-27-141.
Requirement for identification plates, see § 77-7-119.

§ 21-27-141. Penalty for violations.

(1) Any person or persons who may violate any of the provisions of Sections 21-27-131, 21-27-135, 21-27-137, or 21-27-139, shall be guilty of a misdemeanor, and, upon conviction shall be fined not more than $50.00 or thirty days in jail, or by both such fine and imprisonment.

(2) Failure of any owner or operator to comply with any of the requirements of Section 21-27-133 shall be cause for the revocation or suspension of his permit, or a fine not exceeding one thousand dollars, or both.

SOURCES: Codes, 1930, § 5601; 1942, §§ 3495.5, 3500; Laws, 1922, ch. 217; Laws, 1958, ch. 506, §§ 1-5, eff July 1, 1958.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

LICENSING OF BUS DRIVERS

SEC.
21-27-151. Obtaining permit; appeal from refusal to grant permit.
21-27-153. Transfer of badge unlawful.
21-27-155. Revocation or suspension of permit.

§ 21-27-151. Obtaining permit; appeal from refusal to grant permit.

No person may drive or operate any bus of a transportation system for the transportation of passengers within any city or town in this state, where the operation of such bus is subject to regulation by the authorities of such city or town under Section 21-27-121, unless he shall first have been licensed so to do as follows: he shall make application to the mayor of such municipality in writing, accompanied by a statement of some reputable citizen thereof, that the applicant is over the age of eighteen years, an experienced driver, of good moral character, and physically and mentally capacitated to drive and operate such motor vehicle. The mayor shall place such application before the board of aldermen, or other governing authorities, whereupon inquiry may be made by such governing authorities into the moral character and mental and physical fitness of the applicant. If the permit shall be granted the applicant shall receive a license, signed by the mayor, together with a metallic badge, which shall have a number and the name of the municipality thereon, and which shall be worn so that the same will be displayed while engaged in or about such occupation. The governing authorities of the municipality may require the applicant to give a reasonable bond, of not more than five hundred dollars, to guarantee the faithful observance of the law as well as the rules and regulations which may be prescribed by the said municipality, and they may also require a reasonable fee, not to exceed five dollars for such license, which said license fee shall be paid into the general fund of such municipality. In the event the governing authority of such municipality refuse to grant such license to an applicant, an appeal may be taken to the circuit court, in the manner provided by law for appealing from other orders of the governing authorities of municipalities, and the questions to be tried upon appeal will be as to the age and experience and the moral, mental and physical fitness of the said applicant to pursue such vocation in such municipality.

SOURCES: Codes, 1942, § 3374-143.5; Laws, 1962, ch. 543, §§ 1-4.

Cross References — Licensing of operators of motor vehicles for hire, see § 21-27-131.

Fees and expiration dates for drivers' licenses, see §§ 61-1-43 et seq.

Revocation of driver's license, see § 63-1-51.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 11.

CJS. 53 C.J.S., Licenses §§ 16-19, 62, 65, 66.

§ 21-27-153. Transfer of badge unlawful.

It shall be unlawful for any driver who secures such license and badge to transfer such license or badge to any other driver, or for any person to use the license or badge of another person while driving or operating such bus.

SOURCES: Codes, 1942, § 3374-143.5; Laws, 1962, ch. 543, §§ 1-4.

§ 21-27-155. Revocation or suspension of permit.

The governing authority of the municipality may revoke or suspend such license and demand the return of such badge upon proof that the holder while driving, or while in charge of such motor vehicle:

(a) was intoxicated, or noticeably under the influence of intoxicating liquor; or,

(b) had disturbed the peace while so engaged; or,

(c) had recklessly disregarded the speed regulations prescribed by law; or,

(d) had carried concealed weapons in violation of law.

The said authority may by ordinance prescribe other reasonable rules and regulations governing the use and operation of such bus within the municipality, and cause the same to be observed by such driver or operator, under penalty of revocation or suspension of such license. Any person whose license to drive or operate such bus has been suspended or revoked may appeal to the circuit court from such order in the manner provided for appeals from orders of the governing authority of municipalities, but such appeal shall not operate as a supersedeas of said order.

SOURCES: Codes, 1942, § 3374-143.5; Laws, 1962, ch. 543, §§ 1-4.

Cross References — Revocation or suspension of permit of operator of motor vehicle for hire, see § 21-27-137.

RESEARCH REFERENCES

Am Jur. 1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.

METROPOLITAN AREA WASTE DISPOSAL

Sec.
21-27-161. Declaration of purpose; short title.
21-27-163. Definitions.
21-27-165. General powers of municipality as to waste collection, transportation, treatment, or disposal within metropolitan area.
21-27-167. Acquisition of necessary property by municipality.
21-27-169. Municipality may obtain federal assistance.
21-27-171. Contracts with municipalities.
21-27-173. Payments by public agency under contract.
21-27-175. Public agency may levy ad valorem tax.
21-27-177. Public agency to make necessary adjustments of rates.
21-27-179. Issuance of bonds by municipality.
21-27-181. Municipality to make necessary adjustments of rates.
21-27-183. Validation of bonds.

21-27-185. Investment of bond proceeds.
21-27-187. Bonds exempt from inclusion in debt-limitations; bonds are legal investments.
21-27-189. Other powers and authority of municipality.
21-27-191. Aforesaid sections are cumulative.

§ 21-27-161. Declaration of purpose; short title.

Sections 21-27-161 through 21-27-191 are for the purpose of authorizing a cooperative effort by public agencies for the safe and economical construction and operation of systems for the collection, transportation, treatment and disposal of wastes, including sewerage systems and sewage disposal systems, in order to prevent and control the pollution of the waters in this state. Said sections may be cited as the "Metropolitan Area Waste Disposal Act."

SOURCES: Laws, 1975, ch. 496, § 1, eff from and after passage (approved April 7, 1975).

Cross References — Authority to adopt ordinances relating to individual onsite wastewater disposal systems, see § 41-67-15.

RESEARCH REFERENCES

ALR. Breach of warranty in sale, installation, repair, design, or inspection of septic or sewage disposal systems. 50 A.L.R.5th 417.

§ 21-27-163. Definitions.

Words and phrases used in Sections 21-27-161 through 21-27-191 shall have meanings as follows:

(a) "Act" shall mean the Metropolitan Area Waste Disposal Act [Sections 21-27-161 through 21-27-191], as originally enacted or as hereafter amended.

(b) "Person" means and includes the State of Mississippi, a municipality as defined herein, any public agency as defined herein or any other city, town or political subdivision or governmental agency of the State of Mississippi or of the United States of America, or any individual, copartnership, association, firm, trust, estate or any other entity whatsoever.

(c) "Waterworks" means all works, plants or other facilities necessary for the purpose of collecting, storing, treating and transporting water for domestic, municipal, commercial, industrial, agricultural and manufacturing purposes, including open channels.

(d) "Water supply system" means pipelines, conduits, pumping stations and all other structures, devices and appliances appurtenant thereto, including land and right-of-way thereto, for use for transporting water to a point of ultimate use.

(e) "Waste" means sewage, industrial waste, municipal waste, recreational waste and agricultural waste, waste heat and any other waste that may cause impairment of the quality of the waters in the state.

(f) "Sewerage system" means pipelines or conduits, canals, pumping stations and force mains, and all other structures, devices, facilities and appliances appurtenant thereto, used for collecting or conducting waste to an ultimate point for treatment or disposal.

(g) "Treatment facilities" means any plant, disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, canal, incinerator, area devoted to sanitary landfills or other works not specifically mentioned herein, installed for the purpose of treating, neutralizing, stabilizing or disposing of waste or facilities to provide cooling water to collect, control and dispose of waste heat.

(h) "Sewage disposal system" means a system for disposing of waste, including but not limited to sewerage systems and treatment facilities, as such terms are defined herein.

(i) The terms "pollution," "waters" or "waters in the state" shall have meanings as set forth in the Mississippi Air and Water Pollution Control Law, as now or hereafter amended, appearing as Section 49-17-1 through Section 49-17-70, Mississippi Code of 1972.

(j) "Municipality" means any incorporated city having a population in excess of one hundred fifty thousand (150,000) according to the most recently completed federal decennial census, whether operating under general law or under special charter.

(k) "Metropolitan area" means all of the area or territory lying within the corporate limits of a municipality as herein defined, whether or not such area or territory be contiguous, and all area or territory lying not more than ten (10) miles from the outer boundary of any of the areas or territories comprising a municipality as herein defined, and all of an incorporated city or town, any part of which lies within the aforementioned ten-mile limit.

(*l*) "Public agency" means any incorporated city or town lying wholly or partially within a metropolitan area, any state board or commission owning or operating properties within a metropolitan area, a district created pursuant to Sections 51-9-101 through 51-9-163, or a political subdivision of the State of Mississippi lying wholly or partially within a metropolitan area and having the power to own and operate waterworks, water supply systems, sewerage systems, treatment facilities or sewage disposal systems or other facilities or systems for the collection, transportation, treatment and disposal of waste.

(m) "Metropolitan area plan" means a comprehensive plan for water quality management and the control and abatement of pollution within the metropolitan area, consistent with applicable water quality standards established pursuant to the Federal Water Pollution Control Act.

(n) "Federal Water Pollution Control Act" shall mean the Federal Water Pollution Control Act, being 33 U.S.C.S. 1151 et seq. as now or hereafter amended, and the Federal Water Pollution Control Act Amendments of 1972, being P.L. 92-500, 86 Stat. 816 as now or hereafter amended.

SOURCES: Laws, 1975, ch. 496, § 2, eff from and after passage (approved April 7, 1975).

Cross References — Powers and authority of municipalities generally, see § 21-17-5.

General powers of municipality with regard to waste disposal, see § 21-27-165.

Other powers and authority of municipality with regard to waste disposal, see § 21-27-189.

JUDICIAL DECISIONS

1. Metropolitan area plan.

Reading the Metropolitan Area Waste Disposal Act, Miss. Code Ann. §§ 21-27-189 and 21-27-163(m), together, if a city chooses to exercise the authority granted by the Legislature to operate and maintain a municipal sewage system, then the city must do so in a manner consistent with the water-quality standards established by the Federal Water Pollution Control Act, in accordance with its metropolitan-area plan, and with any rules and regulations adopted by the city itself. Fortenberry v. City of Jackson, 71 So. 3d 1211 (Miss. Ct. App. 2010), reversed by 71 So. 3d 1196, 2011 Miss. LEXIS 88 (Miss. 2011).

§ 21-27-165. General powers of municipality as to waste collection, transportation, treatment, or disposal within metropolitan area.

A municipality is authorized and empowered to acquire, construct, improve, enlarge, extend, repair, operate and maintain one or more sewage disposal systems and make contracts with any person or any public agency, under the terms of which the municipality will, within or without the municipality but within its metropolitan area, collect, transport, treat or dispose of waste for such person or public agency. A municipality may also enter into contracts with any person to purchase or sell, by installments over such term as may be deemed desirable, or otherwise, any waste collection, transportation, treatment or sewage disposal facilities or systems. A municipality is also authorized to enter into operating agreements with any person, for such terms and upon such conditions as may be deemed desirable, for the operation of any waste collection, transportation, treatment or sewage disposal facilities or systems of any person by the municipality; and a municipality may lease to or from any person, for such term and upon such conditions as may be deemed desirable, any waste collection, transportation, treatment or sewage disposal facilities or systems.

SOURCES: Laws, 1975, ch. 496, § 3, eff from and after passage (approved April 7, 1975).

Cross References — Powers and authority of municipalities generally, see § 21-17-5.

Other powers and authority of municipality with regard to waste disposal, see § 21-27-189.

Authority to adopt ordinances relating to individual onsite wastewater disposal systems, see § 41-67-15.

RESEARCH REFERENCES

ALR. Breach of warranty in sale, installation, repair, design, or inspection of septic or sewage disposal systems. 50 A.L.R.5th 417.

§ 21-27-167. Acquisition of necessary property by municipality.

A municipality shall have the power and right to acquire and to own, maintain, use and operate any and all property of any kind, real, personal or mixed, or any interest therein within or without the boundaries of its metropolitan area necessary or convenient to the exercise of the purposes of and the powers granted by Sections 21-27-161 through 21-27-191. Within any unincorporated portion of its metropolitan area, a municipality may acquire such property by exercise of the power of eminent domain as provided in Chapter 27, Title 11, Mississippi Code of 1972. Prior to the exercise of the power of eminent domain within any unincorporated portion of its metropolitan area, a municipality shall seek and obtain a written agreement with the public agency or other person having local jurisdiction of such area for the acquisition of such property. The written agreement provided for herein for the exercise of the power of eminent domain shall be spread upon the minutes of said public agency or person as defined herein.

SOURCES: Laws, 1975, ch. 496, § 4, eff from and after passage (approved April 7, 1975).

§ 21-27-169. Municipality may obtain federal assistance.

A municipality is authorized to make such applications and enter into such contracts for financial assistance in comprehensive planning as may be appropriate under the Federal Water Pollution Control Act, as now or hereafter amended; the Federal Water Pollution Control Act Amendments of 1972 (P. L. 92-500); under Chapter 23 and Chapter 26, Title 33, United States Code; under Chapter 9, Title 40, United States Code and under any other relevant statutes.

SOURCES: Laws, 1975, ch. 496, § 5, eff from and after passage (approved April 7, 1975).

§ 21-27-171. Contracts with municipalities.

A municipality may enter into contract with any person or public agency situated wholly or partly within its metropolitan area, whether or not lying wholly or partially within its boundaries, for any of the purposes authorized by Sections 21-27-161 through 21-27-191. Public agencies and other persons are hereby authorized to make contracts with a municipality under which the municipality will make a sewage disposal system available to a public agency or group of public agencies or to other persons and furnish waste collection, transportation, treatment and sewage disposal services by the municipality's sewage disposal system. The contract may be upon such terms and for such period of time as the parties may agree and may provide that it will remain in effect until any bonds issued or to be issued by the municipality, and any bonds which may be issued to refund the same are paid; the contract may contain provisions to assure equitable treatment of persons or public agencies who contract with the municipality for waste collection, transportation, treatment and sewage disposal services from the same sewage disposal system; may contain provisions requiring any public agency or other person to regulate the quality and strength of waste to be handled by the sewage disposal system; shall provide the method of determining the amounts to be paid by a public agency or other person to the municipality; may provide for the sale or lease to or use of by the municipality of any sewage disposal system or any part thereof at the time owned or to be acquired by a public agency or other person; may provide that the municipality shall operate any sewage disposal system or part thereof at the time owned or to be acquired by a public agency or other person; may provide that a public agency shall have the right to continued performance of such services after the amortization of the municipality's investment in the sewage disposal system during the useful life thereof upon payments of reasonable charges therefor, reduced to take into consideration such amortization; and may contain such other provisions and requirements as the municipality and a public agency or other person may determine to be appropriate or necessary. A municipality may also provide in its contract that the municipality shall have the right to use any streets, alleys and public ways and places within the jurisdiction of a public agency or other person during the term of the contract.

SOURCES: Laws, 1975, ch. 496, § 6, eff from and after passage (approved April 7, 1975).

RESEARCH REFERENCES

ALR. Breach of warranty in sale, installation, repair, design, or inspection of septic or sewage disposal systems. 50 A.L.R.5th 417.

§ 21-27-173. Payments by public agency under contract.

Payments by a public agency to the municipality for waste collection, transportation, treatment and sewage disposal services and facilities may be made from the income of the public agency's waterworks system or water supply system or its sewerage system, treatment facilities or sewage disposal system or of both such systems or of its combined waterworks, water supply, treatment facilities, sewerage and sewage disposal systems, as may be prescribed in the contract between the municipality and the public agency, or as otherwise authorized by law. Such payments shall constitute an operating expense of the system or systems whose revenues are thus to be applied. Payments to be made under the contract by the public agency from the income of its waterworks system, water supply system, treatment facility, sewerage system or sewage disposal system or both such systems or its combined waterworks, water supply, treatment facility, sewerage and sewage disposal systems shall be subordinate to amounts required to be paid from the net revenues of such systems for principal of and interest on bonds of the public agency which are outstanding at the time of the making of the contract and which are payable solely from such net revenues unless the ordinance or resolution authorizing such outstanding bonds of the public agency expressly reserves the right to accord such contract payments a priority over such public agency's bond requirements. No provision of Sections 21-27-161 through 21-27-191 shall be construed to prohibit any public agency, otherwise permitted by law to issue bonds, from issuing bonds in the manner provided by law for the construction, renovation, repair or development of waste disposal facilities within the jurisdictional limits of the public agency. Except to the extent provided in Section 21-27-175, neither the municipality nor the holder of any bonds of the municipality shall have the right to demand payment of the public agency's obligation out of any funds raised or to be raised by taxation, but such contracts shall constitute an obligation of the public agency and shall be binding upon such public agency according to its terms and shall continue in effect until all bonds specified therein and refunding bonds issued in lieu of such bonds and all other obligations thereunder shall have been paid. Payments made or to be made to a municipality by a public agency or other person pursuant to a contract for waste collection, transportation, treatment and sewage disposal services and facilities shall be determined by the method specified in the contract and shall not be subject to approval or review by the public service commission.

SOURCES: Laws, 1975, ch. 496, § 7, eff from and after passage (approved April 7, 1975).

§ 21-27-175. Public agency may levy ad valorem tax.

Any public agency having taxing powers, other than a county or a municipality as herein defined, is authorized to levy a special ad valorem tax not to exceed four (4) mills upon all taxable property within its geographical limits to pay all or a portion of the payments to be made by that public agency under a contract between the public agency and a municipality and if the contract as authorized by the governing body of the public agency so provides, then the contract shall constitute an obligation against the taxing power of the public agency to the extent therein provided. The special ad valorem tax millage authorized by Sections 21-27-161 through 21-27-191 shall not be reimbursable by the state under the provisions otherwise made for reimbursements under the homestead exemption laws.

The proceeds derived from two (2) mills of the levy authorized herein shall be included in the ten percent (10%) increase limitation under Section 27-39-321, and the proceeds derived from any additional millage levied hereunder in excess of two (2) mills shall be excluded from such limitation for the first year of such additional levy and shall be included within such limitation in any year thereafter.

SOURCES: Laws, 1975, ch. 496, § 8; Laws, 1987, ch. 507, § 16, eff from and after passage (approved April 20, 1987).

Cross References — Payments by public agency under contract, see § 21-27-173.

§ 21-27-177. Public agency to make necessary adjustments of rates.

Whenever a public agency and a municipality shall have executed a contract under Sections 21-27-161 through 21-27-191 and the payments thereunder are to be made either wholly or partly from the revenues of the public agency's waterworks system, water supply system, treatment facility, sewerage system or sewage disposal system or from both systems or a combination of both systems, the duty is hereby imposed on the public agency to establish and maintain and from time to time to adjust the rates charged by the public agency for the services of such system or systems, to the end that the revenues therefrom together with any taxes levied in support thereof will be sufficient at all times to pay: (a) the expense of operating and maintaining such system; (b) all of the public agency's obligations to the municipality under the contract; and (c) all of the public agency's obligations under and in connection with revenue bonds theretofore issued, or which may be issued thereafter secured by revenues of such system or systems. The contract may require the use of consulting engineers and financial experts to advise the public agency whether and when such rates are to be adjusted.

SOURCES: Laws, 1975, ch. 496, § 9, eff from and after passage (approved April 7, 1975).

§ 21-27-179. Issuance of bonds by municipality.

For the purpose of acquiring, constructing, improving, enlarging, extending and repairing a sewage disposal system or sewage disposal systems, a municipality is authorized to issue bonds payable from and secured by a pledge of all or any part of revenues under any contract or contracts it enters into under Sections 21-27-161 through 21-27-191 and from all or any part of any revenues derived from the operation of the waterworks system, water supply system, treatment facility, sewerage system or sewage disposal system and pledged for such purpose by the municipality. Said bonds shall be in such form and denomination as prescribed by the governing body of the municipality. Such bonds may be serial or term; redeemable, with or without premium, or nonredeemable; registered or coupon bonds with registration privileges as to either principal and interest; principal only or both; shall bear interest at a rate or rates to be determined pursuant to the sale of the bonds; and shall be payable at such time or times and shall mature at such time or times not exceeding the said estimated life of the contemplated system or improvement, but in no event exceeding thirty (30) years from their date, and at such place or places as shall be prescribed in the bond resolution authorizing their issuance; provided, however, that any bond issue to be awarded and sold to the

United States of America or any agency thereof shall mature at such time or times, not to exceed thirty-five (35) years, as shall be prescribed in the ordinance authorizing their issuance. Any provisions of the general laws to the contrary notwithstanding, any bonds and interest coupons issued pursuant to the authority of Sections 21-27-161 through 21-27-191 shall possess all the qualities of negotiable instruments. The bonds and the interest coupons shall be executed in such manner and shall be substantially in the form prescribed in the authorizing resolution. In case any of the officers whose signatures or countersignatures appear on the bonds or interest coupons shall cease to be such officers before delivery of such bonds, such signatures or countersignatures shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until such delivery. No bond shall bear more than one (1) rate of interest; each bond shall bear interest from its date to its stated maturity date at the interest rate specified in the bid; all bonds of the same maturity shall bear the same rate of interest from date to maturity; all interest accruing on such bonds so issued shall be payable semiannually or annually, except that the first interest coupon attached to any such bond may be for any period not exceeding one (1) year.

No interest payment shall be evidenced by more than one (1) coupon and neither cancelled nor supplemental coupons shall be permitted; the lowest interest rate specified for any bonds issued shall not be less than seventy percent (70%) of the highest rate specified for the same bond issue. Such bonds shall not bear a greater overall maximum interest rate to maturity than that allowed in Section 75-17-103, Mississippi Code of 1972. Each interest rate specified in any bid must be in multiples of one-eighth of one percent (⅛ of 1%) or in multiples of one-tenth of one percent (⅒ of 1%). If serial bonds, such bonds shall mature annually, and the first maturity date thereof shall not be more than five (5) years from the date of such bonds. Such bonds shall be legal investments for trustees and other fiduciaries, and for savings banks, trust companies and insurance companies organized under the laws of the state of Mississippi. The bonds and interest coupons shall be exempt from all state, county, municipal and other taxation under the laws of the state of Mississippi. No bond issued pursuant to Sections 21-27-161 through 21-27-191 shall constitute an indebtedness of a municipality within the meaning of any statutory or charter restriction or limitation upon indebtedness. Such bonds shall be sold on sealed bids at public sale in the manner provided by Section 31-19-25, as now or hereafter amended, upon such terms as the governing authorities of the municipality may determine, not inconsistent with the provisions of Sections 21-27-161 through 21-27-191, but no sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than that allowed in Section 75-17-103, Mississippi Code of 1972, computed with relation to the absolute maturity of the bonds, in accordance with standard tables of bond values, excluding from such computation the amount of any premium to be paid on redemption of any bonds prior to maturity. Sections 21-27-161 through 21-27-191 shall be full and complete authority for the issuance of the bonds provided for herein, and no restriction or limitation otherwise prescribed by law shall apply herein, nor shall such bonds constitute an indebtedness of the municipality within the meaning of any constitutional or statutory limitation.

SOURCES: Laws, 1975, ch. 496, § 10; Laws, 1981, ch. 494, § 2; Laws, 1982, ch 434, § 7; Laws, 1983, ch. 541, § 11, eff from and after passage (approved April 25, 1983).

§ 21-27-181. Municipality to make necessary adjustments of rates.

While any such bonds are outstanding, it shall be the duty of the governing body of the municipality to fix, maintain and collect rates and charges for services furnished or made available by the sewage disposal system, adequate to pay maintenance and operation costs of the expenses allocable to the sewage disposal system, payment of principal of and interest on such bonds, and to provide and maintain the funds created by the resolution authorizing the bonds. Interest to accrue on the bonds and administrative expenses to estimated date when the sewage disposal system will become revenue producing and reserve funds created by the resolution authorizing the bonds may be set aside out of bond proceeds.

SOURCES: Laws, 1975, ch. 496, § 11; Laws, 1980, ch. 523, § 4, eff from and after passage (approved May 26, 1980).

§ 21-27-183. Validation of bonds.

All bonds issued pursuant to Sections 21-27-161 through 21-27-191 shall be validated as now provided by law by Sections 31-13-1 through 31-13-11.

SOURCES: Laws, 1975, ch. 496, § 12, eff from and after passage (approved April 7, 1975).

§ 21-27-185. Investment of bond proceeds.

Proceeds from the sale of bonds may be invested, pending their use, in such certificates of deposit as are specified in the resolution authorizing the issuance of the bonds or the trust indenture securing them, and the earnings on such investments applied as provided in such resolution or trust indenture.

SOURCES: Laws, 1975, ch. 496, § 13, eff from and after passage (approved April 7, 1975).

§ 21-27-187. Bonds exempt from inclusion in debt-limitations; bonds are legal investments.

All bonds issued under Sections 21-27-161 through 21-27-191 shall be and are hereby exempt from inclusion in debts in determining whether additional bonds may be issued by such municipality and are declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, trustees and for the sinking fund of municipalities, towns, villages, school districts or any other political corporation or subdivision of the State of Mississippi.

SOURCES: Laws, 1975, ch. 496, § 14, eff from and after passage (approved April 7, 1975).

§ 21-27-189. Other powers and authority of municipality.

A municipality, as defined in Section 21-27-163, is authorized and empowered, in the discretion of its governmental authorities, to exercise the following powers and authority within the area and territories comprising the metropolitan area of which it is a part:

(a) To operate and manage sewerage systems, sewage treatment facilities and sewage disposal systems and related facilities serving the metropolitan area in conformance with the metropolitan area plan.

(b) To construct, operate and maintain sewerage systems, sewage treatment facilities and sewage disposal systems in the manner and to the extent required by the metropolitan area plan.

(c) To accept and utilize grants and other funds from any source for waste treatment management purposes.

(d) To establish and maintain rates and charges for the use of the services of such sewerage systems, sewage treatment facilities and sewage disposal systems within the metropolitan area, and from time to time to adjust such rates, to the end that the revenues therefrom will be sufficient at all times to pay the expenses of operating and maintaining such works, facilities and systems and all of the municipality's obligations under any contract or bond resolution with respect thereto.

(e) To incur short and long-term indebtedness under the provisions of Sections 21-27-161 through 21-27-191 or other applicable statutes.

(f) To adopt rules and regulations necessary to carry out the implementation of the metropolitan area plan and to assure the payment of each participating person or public agency of its proportionate share of treatment costs.

(g) To refuse to receive any waste from any public agency or subdivision thereof or any other person which does not comply with the provisions of the metropolitan area plan applicable to the particular area within which such public agency or subdivision thereof or any other person is located.

(h) To accept industrial waste for treatment and to require the pretreatment of same when within the opinion of the municipality such pretreatment is necessary.

(i) To adopt all necessary and reasonable rules and regulations to carry out and effectuate any waste treatment plan adopted for the metropolitan area.

(j) To require by ordinance or by contract with a public agency or other person that all waste within the metropolitan area be disposed of through sewerage systems, treatment facilities and sewage disposal systems which comprise a part of the metropolitan area plan, to the extent that the same may be available, but no public agency shall be precluded from constructing, operating and maintaining its own sewerage system if the same be a part of the metropolitan area plan.

SOURCES: Laws, 1975, ch. 496, § 15, eff from and after passage (approved April 7, 1975).

JUDICIAL DECISIONS

1. Interpretation.

City was immune from homeowners' claims arising from sewer back-ups as a result of a city ordinance requiring larger sewer lines than were present on the homeowners' property because Jackson, Miss., Ordinances art. II, § 205(4) exempted the homeowners' subdivision from the ordinance, so the ordinance did not cause the city's maintenance of the city's sewage system to be a ministerial function. Fortenberry v. City of Jackson, 71 So. 3d 1196 (Miss. 2011).

City was immune from homeowners' claims arising from sewer back-ups because (1) Miss. Code Ann. § 21-27-189(b) gave the city discretion to maintain the city's sewage system, and (2) the city's duty to maintain the system did not become ministerial once the city made the decision to operate a sewage system. Fortenberry v. City of Jackson, 71 So. 3d 1196 (Miss. 2011).

Reading the Metropolitan Area Waste Disposal Act, Miss. Code Ann. §§ 21-27-189 and 21-27-163(m), together, if a city chooses to exercise the authority granted by the Legislature to operate and maintain a municipal sewage system, then the city must do so in a manner consistent with the water-quality standards established by the Federal Water Pollution Control Act, in accordance with its metropolitan-area plan, and with any rules and regulations adopted by the city itself. Fortenberry v. City of Jackson, 71 So. 3d 1211 (Miss. Ct. App. 2010), reversed by 71 So. 3d 1196, 2011 Miss. LEXIS 88 (Miss. 2011).

Analysis of the Metropolitan Area Waste Disposal Act, Miss. Code Ann. § 21-27-189(b), provides that if a municipality exercises the enumerated powers and authority outlined by the statute, the exercise of such power, i.e., to construct, operate, and maintain the sewerage system, must be done in a manner consistent with the metropolitan area plan, but a municipality possesses the discretion under this statute as to whether or not it wants to run its own sewage system; sewage operations could be run by the private sector, and if the municipality chooses to exercise this authority, compliance with the applicable water-quality and pollution-control laws is required to protect the public health and water quality. Fortenberry v. City of Jackson, 71 So. 3d 1211 (Miss. Ct. App. 2010), reversed by 71 So. 3d 1196, 2011 Miss. LEXIS 88 (Miss. 2011).

Circuit court erred in granting a city summary judgment in landowners' action to recover for the damages they sustained when raw sewage flooded their homes due to blockage in the city's sewage lines because a genuine issue of material fact existed as to whether the city violated a ministerial duty that it articulated and imposed on itself in a subdivision ordinance as to minimum-design standards and sewage pipe size, and the record reflected evidence that the city breached a ministerial duty set forth in its own ordinance that contained no element of choice; the circuit court erred in its interpretation and application of only a portion of the Metropolitan Area Waste Disposal Act, Miss. Code Ann. § 21-27-189, in failing to apply the related statutes referred to in the text of § 21-27-189, and in ignoring the city's requirement to abide by the Act because the plain language of the grant of authority in § 21-27-189 entailed compliance with the metropolitan-area plan, federal law, and city rules and regulations enacted to ensure compliance with the plan, and in the exercise of that statutory authority to adopt rules and regulations locally, the city adopted its own minimum standards as provided in a subdivision ordinance that set forth no discretion or choice as to minimum-design standards, stating that the sewerage system pipes had to conform to a minimum pipe size of eight inches. Fortenberry v. City of Jackson, 71 So. 3d 1211 (Miss. Ct. App. 2010), reversed by 71 So. 3d 1196, 2011 Miss. LEXIS 88 (Miss. 2011).

RESEARCH REFERENCES

ALR. Breach of warranty in sale, installation, repair, design, or inspection of septic or sewage disposal systems. 50 A.L.R.5th 417.

§ 21-27-191. Aforesaid sections are cumulative.

Sections 21-27-161 through 21-27-191 are cumulative of other statutes now or hereafter enacted relating to the issuance of bonds; the collection, transportation, treatment or disposal of wastes; and the design, construction, acquisition or approval of facilities for such purposes, and the municipality may exercise all presently held powers in the furtherance of said sections.

SOURCES: Laws, 1975, ch. 496, § 16, eff from and after passage (approved April 7, 1975).

MUNICIPAL AND DOMESTIC WATER AND WASTEWATER SYSTEM OPERATOR'S CERTIFICATION ACT OF 1992

Sec.	
21-27-201.	Short title.
21-27-203.	Definitions.
21-27-205.	Classification of water systems and wastewater facilities; reciprocal arrangements for certification and training for operators of commercial nonhazardous solid waste landfills.
21-27-207.	Regulatory authority of Mississippi State Board of Health and Mississippi Commission on Natural Resources.
21-27-209.	Repealed.
21-27-211.	Requirement that operators hold certificates of competency; operation on interim basis.
21-27-213.	Certification of persons acting as operators.
21-27-215.	Certification of persons holding certificates of competency obtained through examination under voluntary certification program.
21-27-217.	Penalties; injunctive relief.
21-27-219.	Complaints; conduct of hearings; notice; issuance of subpoenas.
21-27-221.	Appeals.

§ 21-27-201. Short title.

Sections 21-27-201 through 21-27-221 shall be known as the "Municipal and Domestic Water and Wastewater System and Nonhazardous Solid Waste Management Facilities Operator's Certification Act of 1992."

SOURCES: Laws, 1986, ch. 354, § 1; Laws, 1992, ch. 432, § 1, eff from and after July 1, 1992.

Cross References — Procedures for publication, adoption, amendment or repeal of rules and regulations necessary to implement this section, see § 49-17-25.

RESEARCH REFERENCES

Am Jur. 61C Am. Jur. 2d, Pollution Control § 675 et seq.

78 Am. Jur. 2d, Waterworks and Water Companies § 2.

CJS. 93 C.J.S., Waters §§ 518-812.

§ 21-27-203. Definitions.

For purposes of Sections 21-27-201 through 21-27-221, the following terms shall have the meanings ascribed herein, unless the context shall otherwise require:

(a) "Association" means the Mississippi Water and Pollution Control Operator's Association, Inc.

(b) "Board" means the Mississippi State Board of Health.

(c) "Commission" means the Mississippi Commission on Environmental Quality.

(d) "Community water system" means a public water system serving piped water for human consumption to fifteen (15) or more individual service connections used by year-round consumers or regularly serving twenty-five (25) or more individual consumers year-round, including, but not limited to, any collection, pretreatment, treatment, storage and/or distribution facilities or equipment used primarily as part of, or in connection with, that system, regardless of whether or not the components are under the ownership or control of the operator of the system.

(e) "Commercial Class I rubbish site" means a permitted rubbish site which accepts for disposal Class I rubbish, as defined by the commission, for compensation or from more than one (1) generator.

(f) "Nontransient, noncommunity water system" means a public water system that is not a community water system and that regularly serves at least twenty-five (25) of the same persons over six (6) months per year.

(g) "Operator" means the person who directly supervises and is personally responsible for the daily operation and maintenance of a wastewater facility, community water system, nontransient, noncommunity water system or commercial nonhazardous solid waste management landfill.

(h) "Person" means the state or any agency or institution of the state, any municipality, political subdivision, public or private corporation, individual, partnership, association or other entity, including any officer or governing or managing body of any municipality, political subdivision, or public or private corporation, or the United States or any officer or employee of the United States.

(i) "Pollution" means contamination or other alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity or odor of the waters, or the discharge of any liquid, gaseous, solid, radioactive or other substance or heat into any waters of the state.

(j) "Wastewater facilities" means pipelines or conduits, pumping stations, force mains, treatment plants, lagoons or any other structure, device, appurtenance or facility, whether operated individually or in any combination, used for collecting, treating and/or disposing of municipal or domestic wastewater, by either surface or underground methods, which is required to have a permit under Section 49-17-29.

(k) "Waters of the state" means all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems and all other bodies or accumulations of water, surface and underground, natural or artificial, situated wholly or partly within or bordering upon the state, and such coastal waters as are within the jurisdiction of the state, except lakes, ponds or other surface waters which are wholly landlocked and privately owned.

SOURCES: Laws, 1986, ch. 354, § 2; Laws, 1992, ch. 432, § 2; Laws, 1997, ch. 478, § 1; Laws, 2004, ch. 466, § 1, eff from and after July 1, 2004.

Editor's Note — Section 49-2-6 provides that wherever the term "Mississippi Commission on Natural Resources" appears in any law the same shall mean the Mississippi Commission on Environmental Quality.

Cross References — Mississippi Commission of Environmental Quality generally, see §§ 49-2-1 et seq.

Procedures for publication, adoption, amendment or repeal of rules and regulations necessary to implement this section, see § 49-17-25.

RESEARCH REFERENCES

Am Jur. 61C Am. Jur. 2d, Pollution Control § 675 et seq.

78 Am. Jur. 2d, Waterworks and Water Companies § 2.

CJS. 93 C.J.S., Waters §§ 518-812.

§ 21-27-205. Classification of water systems and wastewater facilities; reciprocal arrangements for certification and training for operators of commercial nonhazardous solid waste landfills.

(1) The board shall classify all municipal and domestic water collection, storage, treatment and/or distribution systems actually used or intended for use as community water systems or nontransient, noncommunity water systems according to size, type, character of water to be treated, number of service connections, and other physical conditions affecting the operation and maintenance of those systems, and also according to the degree of skill, knowledge, training and experience required of the operators of those systems to ensure competent, efficient operation and maintenance of such systems and protection of public health.

(2) The commission shall classify all municipal and domestic wastewater facilities according to size, type, character of wastewater to be treated, and other physical conditions affecting the operation and maintenance of the facilities, and also according to the degree of skill, knowledge, training and experience required of the operators of the facilities to ensure competent, efficient operation and maintenance of the facilities and prevention of pollution of waters of the state.

(3) The commission shall establish reciprocal certification arrangements with other states and private companies that establish training and certification programs for operators of commercial nonhazardous solid waste management landfills that meet or exceed the requirements of the commercial nonhazardous solid waste management landfill operator training and certification program established by the commission.

(4) The commission may establish reciprocal certification arrangements with other states and private companies that establish training and certification programs for operators of commercial Class I rubbish sites that meet or exceed the requirements of the commercial Class I rubbish site operator training and certification program established by the commission.

SOURCES: Laws, 1986, ch. 354, § 3; Laws, 1992, ch. 432, § 3; Laws, 1997, ch. 478, § 2; Laws, 2004, ch. 466, § 2, eff from and after July 1, 2004.

Cross References — Procedures for publication, adoption, amendment or repeal of rules and regulations necessary to implement this section, see § 49-17-25.

RESEARCH REFERENCES

Am Jur. 61C Am. Jur. 2d, Pollution Control § 675 et seq.

78 Am. Jur. 2d, Waterworks and Water Companies § 2.

CJS. 93 C.J.S., Waters §§ 518-812.

§ 21-27-207. Regulatory authority of Mississippi State Board of Health and Mississippi Commission on Natural Resources.

Both the board and commission may adopt, modify, repeal and promulgate, after due notice and hearing, and may make exceptions to and grant exemptions and variances from and may enforce those rules, regulations and procedures as are necessary or appropriate to effectuate the duties and responsibilities of these agencies arising under Sections 21-27-201 through 21-27-221. The rules, regulations and procedures shall include, but not be limited to, the following: criteria for classifying municipal and domestic community water systems, nontransient, noncommunity water systems and wastewater facilities; qualifications for operators of community water systems, nontransient, noncommunity water systems and wastewater facilities; certification of operators of commercial Class I rubbish sites; procedures for examining or testing applicants for operator certificates; procedures and fees for issuing, reissuing, modifying, revoking or terminating operator certificates; and reciprocal certification of operators certified in other states having certification requirements not less stringent than those established by the board and commission.

SOURCES: Laws, 1986, ch. 354, § 4; Laws, 1997, ch. 478, § 3; Laws, 2004, ch. 466, § 3, eff from and after July 1, 2004.

Editor's Note — Section 49-2-6 provides that wherever the term "Mississippi Commission on Natural Resources" appears in any law the same shall mean the Mississippi Commission on Environmental Quality.

Cross References — Procedures for publication, adoption, amendment or repeal of rules and regulations necessary to implement this section, see § 49-17-25.

RESEARCH REFERENCES

Am Jur. 61C Am. Jur. 2d, Pollution Control § 675 et seq.

78 Am. Jur. 2d, Waterworks and Water Companies § 2.

CJS. 93 C.J.S., Waters §§ 518-812.

§ 21-27-209. Repealed.

Repealed by Laws, 1986, ch. 354, § 5, eff from and after July 1, 1988. [En Laws, 1986, ch. 354, § 5]

Editor's Note — Former § 21-27-209 provided for the establishment of an advisory committee, its duties, membership, meetings, and expenses.

§ 21-27-211. Requirement that operators hold certificates of competency; operation on interim basis.

(1) It is unlawful to operate or cause to be operated any wastewater facility or community water system covered under Sections 21-27-201 through 21-27-221 unless the operator of that facility or system holds a current certificate of competency issued by the board or commission, as provided by Sections 21-27-201 through 21-27-221, in a classification corresponding to the classification of the facility or system. After July 1, 1998, it shall be unlawful to operate or cause to be operated any nontransient, noncommunity water system covered under Sections 21-27-201 through 21-27-221, unless the operator of that system holds a current certificate of competency issued by the board. If an operator is lost due to illness, death, resignation, discharge or other legitimate cause, the owner or president of the governing board of the facility or system shall immediately notify either the board or commission, as the case may be. The facility or system may continue to operate without a certified operator on an interim basis for a period not to exceed one hundred eighty (180) days, except for good cause shown upon petition to the responsible agency. The board or the commission, as the case may be, may grant, upon petition of the facility or system, an extension of the interim operating period

not to exceed an additional one hundred eighty (180) days for good cause shown.

(2) It is unlawful to operate or cause to be operated any commercial nonhazardous solid waste management landfill permitted under Section 49-17-29 unless the operator of that facility holds a current certificate of competency issued by the commission, as provided by Sections 21-27-201 through 21-27-221. However, in the event of the loss of an operator due to illness, death, resignation, discharge or other legitimate cause, notice shall be immediately given to the commission and the continued operation of the facility without a certified operator may proceed on an interim basis for a period not to exceed one hundred eighty (180) days, except for good cause shown upon petition to the commission.

(3) After June 30, 2005, it is unlawful to operate or cause to be operated any commercial Class I rubbish site, unless the operator of that facility holds a certificate of competency issued by the commission under Sections 21-27-201 through 21-27-221. However, in the event of the loss of an operator due to illness, death, resignation, discharge or other legitimate cause, notice shall be immediately given to the commission and the continued operation of the facility without a certified operator may proceed on an interim basis for a period not to exceed one hundred eighty (180) days, except for good cause shown upon petition to the commission.

SOURCES: Laws, 1986, ch. 354, § 6; Laws, 1992, ch. 432, § 4; Laws, 1995, ch. 603, § 1; Laws, 1996, ch. 393, § 1; Laws, 1997, ch. 478, § 4; Laws, 2004, ch. 466, § 4, eff from and after July 1, 2004.

Cross References — Procedures for publication, adoption, amendment or repeal of rules and regulations necessary to implement this section, see § 49-17-25.

RESEARCH REFERENCES

Am Jur. 61C Am. Jur. 2d, Pollution Control § 675 et seq.

78 Am. Jur. 2d, Waterworks and Water Companies § 2.

CJS. 93 C.J.S., Waters §§ 518-812.

§ 21-27-213. Certification of persons acting as operators.

(1) Notwithstanding any provision of Sections 21-27-201 through 21-27-221 to the contrary, any person who is an operator of a municipal or domestic wastewater facility or community water system on July 1, 1986, may, on or before June 30, 1987, apply to the board or commission for, and shall be issued, an operator's certificate without examination or proof of other qualifications, if the application is accompanied by an affidavit of the owner of the facility or system verifying the status of the applicant. Any certificate so issued shall be valid only for the particular facility being operated by the applicant, and then only so long as the facility remains in the same or a lower classification as at the time the application is filed.

(2) Notwithstanding any provision of Sections 21-27-201 through 21-27-221 to the contrary, any person who is an operator of a nontransient, noncommunity water system on July 1, 1997, may, before June 30, 1998, apply to the board for an operator's certificate without examination. The application shall be accompanied by an affidavit of the owner of the system verifying the status of the applicant. The board shall consider the performance history of any system operated by the applicant in determining whether to issue a certificate under this subsection. Upon review of the performance history and the application, the board may grant or deny the issuance of a certificate under this subsection. Any certificate issued under this subsection shall be valid only for the particular facility being operated by the applicant.

SOURCES: Laws, 1986, ch. 354, § 7; Laws, 1997, ch. 478, § 5, eff from and after July 1, 1997.

Cross References — Procedures for publication, adoption, amendment or repeal of rules and regulations necessary to implement this section, see § 49-17-25.

RESEARCH REFERENCES

Am Jur. 61C Am. Jur. 2d, Pollution Control § 675 et seq.

78 Am. Jur. 2d, Waterworks and Water Companies § 2.

CJS. 93 C.J.S., Waters §§ 518-812.

§ 21-27-215. Certification of persons holding certificates of competency obtained through examination under voluntary certification program.

Notwithstanding any provision of Sections 21-27-201 through 21-27-221 to the contrary, holders of valid certificates of competency obtained through examination under the voluntary certification program sponsored by the association may, on or before June 30, 1987, apply to the board or commission for, and shall be issued, an operator's certificate issued under the provisions of Sections 21-27-201 through 21-27-221 without further examination or proof of other qualifications, provided such state-issued certificate shall be valid only for the class of facility covered by the association certificate.

SOURCES: Laws, 1986, ch. 354, § 8, eff from and after July 1, 1986.

Cross References — Procedures for publication, adoption, amendment or repeal of rules and regulations necessary to implement this section, see § 49-17-25.

RESEARCH REFERENCES

Am Jur. 61C Am. Jur. 2d, Pollution Control § 675 et seq.

78 Am. Jur. 2d, Waterworks and Water Companies § 2.

CJS. 93 C.J.S., Waters §§ 518-812.

§ 21-27-217. Penalties; injunctive relief.

(1) Any person found by the board or commission, as the case may be, or any duly designated hearing officer appointed thereby, violating any of the provisions of Sections 21-27-201 through 21-27-221, or any rule or regulation promulgated by the board or commission hereunder, or any order issued by the board or commission in the exercise of their authority and duties hereunder, shall be subject to a civil penalty of not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00), for each violation, such penalty to be levied and assessed by the board or commission or designated hearing officer. Appeals from such actions may be taken as provided hereinafter. Each day upon which a violation occurs shall be deemed a separate and additional violation.

In determining the amount of any monetary penalty assessed hereunder, the board or commission or duly appointed hearing officer shall consider all factors bearing upon the violation, including but not limited to, any resulting actual or probable pollution of the lands and/or waters of the state and/or endangerment to public health, and the nature and extent thereof, any violation of the terms or conditions of permits issued by the board or commission for the affected facility, and any actual or probable damage to the affected facility caused by improper operation thereof.

(2) In lieu of, or in addition to, the penalty provided in subsection (1) of this section, the board and commission shall have power to institute and maintain in the name of the state any and all proceedings necessary or appropriate to enforce the provisions of Sections 21-27-201 through 21-27-221, rules and regulations in force pursuant hereto, and orders and operator certifications made and issued hereunder, in the appropriate circuit, chancery, county or justice court of the county in which venue may lie. The board and commission may obtain mandatory or prohibitory injunctive relief, either temporary or permanent.

(3) Any person found guilty of violating any provision of Sections 21-27-201 through 21-27-221, upon conviction, shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00) per day of violation.

SOURCES: Laws, 1986, ch. 354, § 9; Laws, 1992, ch. 432, § 5, eff from and after July 1, 1992.

Cross References — Procedures for publication, adoption, amendment or repeal of rules and regulations necessary to implement this section, see § 49-17-25.

RESEARCH REFERENCES

Am Jur. 61C Am. Jur. 2d, Pollution Control § 675 et seq.

78 Am. Jur. 2d, Waterworks and Water Companies § 2.

CJS. 93 C.J.S., Waters §§ 518-812.

§ 21-27-219. Complaints; conduct of hearings; notice; issuance of subpoenas.

(1) Whenever the board or commission or an employee thereof has reason to believe that a violation of any provision of a regulation or of any order of the board or commission has occurred, the board or commission may cause a written complaint to be served upon the alleged violator or violators. The complaint shall specify the provisions of Sections 21-27-201 through 21-27-221 or regulation or order alleged to have been violated and the facts alleged to constitute a violation thereof, and shall require that the alleged violator appear before the board or commission, or any duly designated hearing officer appointed thereby, at a time and place specified in the notice and answer the charges complained of. The time of appearance before the board or commission or designated hearing officer shall be not less than thirty (30) days from the date of the service of the complaint.

(2) The board or commission or designated hearing officer shall afford an opportunity for a fair hearing to the alleged violator or violators at the time and place specified in the complaint. On the basis of the evidence produced at the hearing, the board or commission or designated hearing officer shall make findings of fact and conclusions of law and enter such order as in its opinion will best further the purposes of Sections 21-27-201 through 21-27-221 and shall give written notice of such order to the alleged violator, and the board or commission or designated hearing officer may assess such penalties as hereinbefore provided.

(3) Except as otherwise expressly provided, any notice or other instrument issued by or under authority of the board or commission or designated hearing officer may be served on any person affected thereby personally or by publication, and proof of such service may be made in like manner as in case of service of a summons in a civil action, such proof to be filed in the office of the board or commission; or such service may be made by mailing a copy of the notice, order or other instrument by certified mail, directed to the person affected at his last known post office address as shown by the files or records of the board or commission, and proof thereof may be made by the affidavit of the person who did the mailing, filed in the office of the board or commission.

(4) In conducting the hearings provided in this section, any member of the board or commission, or the chief administrative officer thereof, or the duly designated hearing officer, shall have the authority to issue subpoenas to appear and give testimony, to produce records, or both, and in case of contumacy or refusal to obey a notice of hearing or subpoena issued hereunder, the circuit court shall have jurisdiction upon application of the board or commission or its representative to issue an order requiring obedience to the hearing notice or subpoena of the board or commission or designated hearing officer. Any failure to obey such court order may be punished by such court as contempt thereof. Any member of the board or commission, or the chief administrative officer thereof, or the designated hearing officer, may administer oaths. A verbatim record of the hearing shall be made. Witnesses who are subpoenaed shall receive the same fees and mileage as in civil actions.

(5) Any person aggrieved by the decision of the board or commission to issue, deny, modify or revoke any operator certification hereunder shall be entitled to a full hearing before the board or commission or duly designated hearing officer appointed thereby in the same manner as provided hereinabove, and appeals from such actions shall be in the same manner as provided hereinafter.

SOURCES: Laws, 1986, ch. 354, § 10, eff from and after July 1, 1986.

Cross References — Procedures for publication, adoption, amendment or repeal of rules and regulations necessary to implement this section, see § 49-17-25.

RESEARCH REFERENCES

Am Jur. 61C Am. Jur. 2d, Pollution Control § 675 et seq.

78 Am. Jur. 2d, Waterworks and Water Companies § 2.

CJS. 93 C.J.S., Waters §§ 518-812.

§ 21-27-221. Appeals.

(1) Any person aggrieved by the final decision of any duly designated hearing officer appointed by the board or commission as a result of any hearing held under the provisions of Sections 21-27-201 through 21-27-221 may, within thirty (30) days of receipt of written notice of the action of the hearing officer, appeal such final decision to the full board or commission, as the case may be, by filing therewith a written notice of appeal. No cost bond or other security shall be required to perfect such appeal. The hearing officer shall forthwith prepare and submit to the board or commission the record made at the hearing, which shall thereupon become the record of the cause. Appeals to the board or commission shall be considered only upon the record made before the hearing officer. The board or commission shall review all findings of fact and conclusions of law of the hearing officer, together with any penalties levied, and may affirm, modify or reverse and remand the decision of the hearing officer, as may be determined to be necessary or appropriate. Appeals from the final decision of the board or commission shall be perfected as hereinafter provided.

(2) Any person aggrieved by the final decision of the board or commission as a result of any hearing held under the provisions of Sections 21-27-201 through 21-27-221, including hearings requested incidental to the issuance, denial, modification or revocation of any operator certification issued hereunder, may, within thirty (30) days of receipt of written notice of the action of the board or commission, appeal such final decision to the chancery court of the county of the situs in whole or in part of the subject matter by giving a cost bond with sufficient sureties, payable to the state in the sum of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), to be fixed by the board or commission and to be filed with and approved by the chief administrative officer of the appropriate agency, who shall forthwith certify the same together with a certified copy of the record

made before the board or commission or designated hearing officer in the matter to the chancery court to which the appeal is taken, which shall thereupon become the record of the cause. An appeal to the chancery court as provided herein shall not stay the decision of the board or commission. The aggrieved party may, within such thirty (30) days, petition the said chancery court for an appeal with supersedeas and the chancellor shall grant a hearing on said petition and upon good cause shown may grant such appeal with supersedeas; the appellant shall be required to post a supersedeas bond with sufficient sureties according to law in an amount to be determined by the chancellor. Appeals shall be considered only upon the record as made before the board or commission. The chancery court shall always be deemed open for hearing of such appeals and the chancellor may hear the same in termtime or in vacation at any place in his district, and the same shall have precedence over all civil cases, except election contests. The chancery court shall review all questions of law and of fact. If no prejudicial error be found, the matter shall be affirmed. If prejudicial error be found, the same shall be reversed, and the chancery court shall remand the matter to the board or commission for appropriate action as may be indicated or necessary under the circumstances. Appeals may be taken from the chancery court to the Supreme Court in the manner as now required by law, except that if a supersedeas is desired by the party appealing to the chancery court, he may apply therefor to the chancellor thereof, who shall award a writ of supersedeas, without additional bond, if in his judgment material damage is not likely to result thereby; but otherwise, he shall require such supersedeas bond as he deems proper, which shall be payable to the state for damage.

SOURCES: Laws, 1986, ch. 354, § 11, eff from and after July 1, 1986.

Cross References — Provisions relative to practice and procedure in Chancery Court generally, see §§ 11-5-1 et seq.

Procedures for publication, adoption, amendment or repeal of rules and regulations necessary to implement this section, see § 49-17-25.

RESEARCH REFERENCES

Am Jur. 61C Am. Jur. 2d, Pollution Control § 675 et seq.

78 Am. Jur. 2d, Waterworks and Water Companies § 2.

CJS. 93 C.J.S., Waters §§ 518-812.

CHAPTER 29

Employees' Retirement and Disability Systems

Article 1. General Municipal Employees' Retirement 21-29-1
Article 3. Firemen's and Policemen's Disability and Relief Funds 21-29-101
Article 5. Disability and Relief Fund for Firemen and Policemen Under Laws 1930, Chapter 55 21-29-201
Article 7. Miscellaneous Provisions 21-29-301

ARTICLE 1.

GENERAL MUNICIPAL EMPLOYEES' RETIREMENT.

SEC.
21-29-1. Short title.
21-29-3. Definitions.
21-29-5. Creation of City Employees Retirement Fund; election to come under provisions of article.
21-29-7. Repealed.
21-29-9. Board of the General Retirement System; advisory board.
21-29-11. Powers and duties of board.
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21-29-15. Statement of clerk of municipality; issuance of prior service certificates.
21-29-17. Membership.
21-29-19. Cessation of membership.
21-29-21. Refunds to members withdrawing from service.
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21-29-27. Taxes to meet system requirements; transfer of funds.
21-29-29. Discontinuance, reduction, or reassessment of taxes.
21-29-31. Service retirement.
21-29-33. Service retirement allowance.
21-29-35. Duty disability retirement.
21-29-37. Duty disability retirement allowance.
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21-29-43. Re-examination of disability retirants; revocation of allowance for gainful employment.
21-29-45. Death of member.
21-29-47. Appeal.
21-29-49. Proration of payments.
21-29-51. Rights to any benefit under this Article governed by Section 21-29-307.
21-29-53. Other retirement laws not affected.
21-29-55. Effect of change in form of government.
21-29-57. Vacation and sick leave; payment for unused time.

§ 21-29-1. Short title.

This article may be cited as the "General Municipal Employees' Retirement Law."

SOURCES: Codes, 1942, § 3652.3-01; Laws, 1948, ch. 386, § 1.

Cross References — This article shall not affect firemen's and policemen's disability and relief fund, or school teachers' retirement, see § 21-29-53.

Creditable service provided for membership service interrupted by qualified military service, see § 21-29-301.

Employers to pick up member contributions to employees' retirement and disability systems, see § 21-29-305.

Benefits accrued or accruing under the provisions of this article exempt from all taxes, attachment or other process, and unassignable, see § 21-29-307.

Schedule for computation of membership service or prior service, see § 21-29-313.

Repayment of refund after reemployment following retirement for purpose of reestablishing contributing membership, see § 21-29-315.

Maximum annual retirement allowance, see § 21-29-317.

Employment-related fringe benefits, see § 21-29-319.

Board of Trustees of Public Employees' Retirement System assessment of interest on delinquent payments from municipalities whose retirement funds it administers, see § 21-29-327.

Municipalities may adopt resolutions allowing spouses receiving retirement benefits to continue to receive spouse benefits for life, even after remarriage, see § 21-29-329.

Provisions of social security and retirement and disability benefits, see §§ 25-11-3 et seq.

JUDICIAL DECISIONS

1. In general.

General Municipal Employees' Retirement Act is remedial in its nature and it is to be liberally and broadly construed, and liberally applied in favor of applicants or those intended to be benefited thereby, as a matter of sound public policy. Smith v. Board of Gen. Retirement Sys., 224 Miss. 13, 79 So. 2d 447 (1955), error overruled 224 Miss. 13, 80 So. 2d 46.

RESEARCH REFERENCES

ALR. Disciplinary suspension of public employee as affecting computation of length of service for retirement or pension purposes. 6 A.L.R.2d 506.

Constitutionality, construction, and application of statute or ordinance providing for reduction of pension or retirement benefit of public officer or employee because of independent income. 7 A.L.R.2d 692.

Validity of legislation providing for additional retirement or disability allowances for public employees previously retired or disabled. 27 A.L.R.2d 1442.

Vested right of pensioner to pension. 52 A.L.R.2d 437.

Acceptance of, or assertion of right to, pension or retirement as abandonment of public office or employment. 76 A.L.R.2d 1312.

Am Jur. 60A Am. Jur. 2d, Pensions and Retirement Funds §§ 1166 et seq.

63C Am. Jur. 2d, Public Officers and Employees §§ 177, 178.

CJS. 67 C.J.S., Officers and Public Employees §§ 421-432.

§ 21-29-3. Definitions.

The following words and phrases when used in this article, unless a different meaning is plainly required by the context, shall have the following meanings:

(a) "Retirement system" shall mean a retirement system as authorized by this article;

(b) "Board" shall mean the retirement board provided for in this article to administer the retirement system;

(c) "Municipality" shall mean any city, as defined by Section 21-1-1 which has a population of twenty-one thousand (21,000), or more;

(d) "Governing body" shall mean the legislative body, board or commission of any municipality, as defined in subsection (c) of this section;

(e) "Employer" shall mean a municipality, as defined in subsection (c) of this section, which has elected, as by this article provided, to provide a retirement system;

(f) "Employee" shall mean all administrative and other employees on a monthly salary basis, excepting policemen, firemen, and school teachers;

(g) "Member" shall mean any municipal employee included in the membership of the retirement system;

(h) "Beneficiary" shall mean any person in receipt of an annuity, pension, or retirement allowance granted under the provisions of this article;

(i) "Compensation" shall mean the remuneration paid the employee in cash or warrant out of public funds in return for his services to the employer, plus the monetary value, as determined by the governing body, of whatever living quarters or other thing of monetary value the employer furnishes him in return for his services. Compensation in addition to an employee's base salary that is paid to the employee at the time of his retirement for unused accumulated annual leave, sick leave or both, pursuant to the vacation and sick leave policies of the employer, shall be excluded from the calculation of compensation under this article;

(j) "Accumulated contributions" shall mean the sum of all amounts deducted from the compensation of a member and credited to his individual account in the employees' savings fund, together with interest thereon as by this article provided;

(k) "Service" shall mean time spent as an employee of one (1) employer, the time spent in the employ of one (1) employer under this article not being transferable nor to be considered by any other employer under this article. Service shall not include any unused accumulated annual leave, sick leave or both that any employee has at the time of his retirement pursuant to the vacation and sick leave policies of the employer;

(*l*) "Prior service" shall mean time spent in the employ of an employer, under this article, prior to the effective date of the retirement system; provided, the time spent in the employ of one (1) employer under this article may not be transferable nor considered by any other employer under this article.

Words of the masculine gender shall include words of the feminine gender and vice versa, and words of the singular number in relation to persons shall include the plural number and vice versa.

SOURCES: Codes, 1942, § 3652.3-02; Laws, 1948, ch. 386, § 2; Laws, 1992, ch. 394 § 1, eff from and after passage (approved April 27, 1992).

RESEARCH REFERENCES

Am Jur. 60A Am. Jur. 2d, Pensions and Retirement Funds §§ 1, 2 et seq.

63C Am. Jur. 2d, Public Officers and Employees §§ 177, 178.

CJS. 67 C.J.S., Officers and Public Employees §§ 421-432.

§ 21-29-5. Creation of City Employees Retirement Fund; election to come under provisions of article.

In every municipality of the State of Mississippi, operating under a commission form of government as of March 31, 1948, and having a population of twenty-one thousand or more, according to the 1940 federal census, and in every municipality bordering on tide water and having a population of more than fifteen thousand, it shall be the duty of the governing body of said municipality to create and maintain a fund known as the "City Employees Retirement Fund," which shall be maintained for the benefits of certain city employees hereinafter named and which shall be derived, raised and administered in the manner hereinafter provided.

In any municipality coming under the provisions of this article, upon a petition signed by twenty per cent of the qualified electors of such municipality, protesting against the operation of this article and petitioning for an election thereon to determine whether a majority of the qualified electors of such municipality desire for such municipality to come from under the terms of this article, providing such petition is filed with the governing body of such municipality by July 29, 1948, the municipal authorities of such municipality shall call an election by August 28, 1948, after giving notice for three consecutive weeks, as to whether the municipality desires to come from under the provisions of this article. At said election, the ballots used by the qualified electors shall read: "For the Retirement Fund for the City Employees," "Against the Retirement Fund for the City Employees." Said election shall be held as such other elections of like nature, and if at such election a majority of those participating thereat shall vote against the retirement fund for the city employees, then this article shall not apply to such municipality. If no petition is filed as above provided, the governing body of said municipality shall by August 28, 1948, pass the required ordinance to begin the operation of said retirement system in accordance with the provisions hereof.

SOURCES: Codes, 1942, §§ 3652.3-03, 3652.3-04; Laws, 1948, ch. 386, §§ 3, 4.

Cross References — Commission form of government, see §§ 21-5-1 et seq.

Board of General Retirement System and advisory board, see § 21-29-9.

Duty of municipality's clerk to prepare statement showing employment-related data within 30 days after effective date of ordinance passed under this section, see § 21-29-15.

Provision that municipality which has established municipal employees' retirement system and disability and relief fund for firemen and policemen may divert funds of one system to the less actuarially sound system, see §§ 21-29-27 and 21-29-117.

Levying taxes to meet requirements of retirement system, see § 21-29-27.

Eligibility for service retirement, see § 21-29-31.
Computation of service retirement allowance, see § 21-29-33.
Qualifications for duty-disability retirement, see § 21-29-35.
Computation of duty-disability retirement allowance, see § 21-29-37.
Qualifying for non-duty disability retirement, see § 21-29-39.
Computation of non-duty disability retirement allowance, see § 21-29-41.
Re-examination of disability retirants and revocation of allowance for gainful employment, see § 21-29-43.
Death benefits of widow and dependents, see § 21-29-45.
Appeal from decision of the board of the general retirement system, see § 21-29-47.

RESEARCH REFERENCES

Am Jur. 19 Am. Jur. Pl & Pr Forms (Rev), Pensions and Retirement Funds, Forms 1-5 (complaint, petition, or declaration for judicial declaration as to pension rights).

19 Am. Jur. Pl & Pr Forms (Rev), Pensions and Retirement Funds, Form 16 (order directing payment of pension and adoption of resolution to that end).

19 Am. Jur. Pl & Pr Forms (Rev), Pensions and Retirement Funds, Form 17 (motion for summary judgment dismissing claim for pension).

19 Am. Jur. Pl & Pr Forms (Rev), Pensions and Retirement Funds, Forms 6-8 (complaint, petition, or declaration for mandamus to compel payment of pension benefits).

§ 21-29-7. Repealed.

Repealed by Laws, 1987, ch. 511, § 35, eff from and after April 30, 1987. [Codes, 1942, § 3652.3-26; Laws, 1948, ch. 386, § 26]

Editor's Note — Former § 21-29-7 provided for an election as to the continuance of the retirement system.

§ 21-29-9. Board of the General Retirement System; advisory board.

The Board of Trustees of the Public Employees' Retirement System of Mississippi is hereby constituted a board, which shall be known as the Board of the General Retirement System of ________.

The governing body of a municipality may appoint a board of not more than five (5) members who shall be representative of the membership of the retirement system. Such board shall serve in an advisory capacity to the Board of Trustees of the Public Employees' Retirement System.

SOURCES: Codes, 1942, § 3652.3-04; Laws, 1946, ch. 386, § 4; Laws, 1987, ch. 511, § 1, eff from and after April 30, 1987.

Cross References — City Employees Retirement Fund, see § 21-29-5.
Members appealing decision of board, see § 21-29-47.

§ 21-29-11. Powers and duties of board.

The general administration and responsibility for the proper operation of the retirement system and for making effective the provisions of this article are hereby vested in the board, the members of which shall serve without compensation except as otherwise provided by law. The board shall organize and adopt such rules and regulations as it may deem necessary and promptly do such things as may properly be done.

The board shall have, in addition to all others, the following rights, powers and duties:

(a) It shall keep minutes of its proceedings which shall be open to public inspection;

(b) Fix a time for regular meetings and provide for the means of calling special meetings;

(c) A majority of all of the board members present shall constitute a quorum for transaction of the affairs of the board;

(d) To hear, consider and pass upon all applications coming before it and order payments as provided by this article, and the board may hear witnesses and administer oaths, appoint hearing officers and make decisions in all matters properly before said board;

(e) It shall have full power to invest and reinvest the funds of the retirement system under the provisions of Section 25-11-121. Moreover, said board shall have full power to order the custodian of securities and funds hereafter designated to hold, purchase, sell, assign, transfer and dispose of any of the securities and investments in which any of the funds created herein shall have been invested, as well as the proceeds of said investments and all moneys belonging to said funds. The funds held by the board may be commingled with other Public Employees' Retirement System investments for the most advantageous investments;

(f) It shall annually determine and allow interest on each individual account in the employees' saving fund based on the average percentage of interest earned from investment or deposit of all funds of the retirement system. However, the interest to be credited to such individual accounts shall not exceed one percent (1%) per annum.

SOURCES: Codes, 1942, § 3652.3-05; Laws, 1948, ch. 386, § 5; Laws, 1987, ch. 511, § 2, eff from and after April 30, 1987.

Cross References — Authority to refund contributions to estate of deceased, and to extend benefits to dependent children through age 23, see § 21-29-311.

Authorization for investment in bonds of the Mississippi Finance Corporation, see § 43-33-743.

Bonds of Business Finance Corporation as legal investments for governmental bodies, see § 57-10-257.

§ 21-29-13. Repealed.

Repealed by Laws, 1987, ch. 511, § 35, eff from and after April 30, 1987. [Codes, 1942, § 3652.3-24; Laws, 1948, ch. 386, § 24]

Editor's Note — Former § 21-29-13 provided that the city attorney would act as legal adviser for the retirement board.

§ 21-29-15. Statement of clerk of municipality; issuance of prior service certificates.

The clerk of said employer shall, within thirty (30) days after the effective date of the ordinance of the municipality to be passed as provided in Section 21-29-5, prepare a statement showing the length of service of employees, prior to effective date of said ordinance, then employed by the employer and the total salaries or wages paid each in cash or warrants during the four (4) years of employment by the employer next before said effective date of said ordinance. Such facts shall, subject to correction after each employee is given ten (10) days within which to check and prove to the board any error therein, be the basis for the board to approve the issuance of prior service certificates and records and to determine the sum each prior service employee electing to come within the retirement system shall deposit in the employees' savings fund. The secretary of the board shall, upon approval of the board, issue to each employee a prior service certificate. The clerk of the employer shall have the duty of keeping all service records and all records on the various funds provided by this article. The clerk shall on or before July 1, 1987, forward all service records and funds to the Public Employees' Retirement System.

SOURCES: Codes, 1942, § 3652.3-06; Laws, 1948, ch. 386, § 6; Laws, 1987, ch. 511, § 3, eff from and after April 30, 1987.

§ 21-29-17. Membership.

The membership of the retirement system shall be composed as follows:

(a) All persons who become employees after the date fixed in the ordinance of the governing body for the retirement system to go into effect shall become members of the retirement system on the expiration of two (2) months from date of employment; however, persons who have reached the age of forty (40) years who have not had prior service or membership service which may be reinstated as hereinafter provided shall not be members of the retirement system.

(b) All persons who are employees of the municipality, and who are members of the general municipal employees' retirement system shall come under the provisions and benefits of this article and shall receive all benefits provided for in this article. The municipality shall each month deduct from the total compensation of each member not less than seven percent (7%) nor more than ten percent (10%) of the amount thereof, and put the amounts deducted in the employees' savings fund. Any increase to an amount in excess of seven percent (7%) shall be in increments of not more than one percent (1%) per annum. No increase from the deduction of seven percent (7%) shall be made unless the municipality determines that the avails of a levy of three (3) mills, when combined with the avails of the deduction of seven percent (7%), is insufficient to keep the system actuarially sound.

(c) In lieu of the other provisions of this article, any municipality operating under the provisions of this article on March 1, 1976, may, by a resolution duly adopted and entered upon its minutes, enter into an agreement with the Public Employees' Retirement System of Mississippi whereby all new firemen and policemen employed or reemployed after the effective date of such agreement shall be included in the provisions of such agreement for retirement purposes to the same extent as are other employees covered by the Public Employees' Retirement System.

(d) No new member may be joined after July 1, 1987, and all new employees of the municipality who are employed after July 1, 1987, shall be covered by the Public Employees' Retirement System of Mississippi.

SOURCES: Codes, 1942, § 3652.3-07; Laws, 1948, ch. 386, § 7; Laws, 1976, ch. 463, § 1; Laws, 1987, ch. 511, § 4, eff from and after April 30, 1987.

Cross References — Persons entitled to benefits under Firemen's and Policemen's Disability and Relief Funds, see § 21-29-129.

Persons entitled to benefits under Disability and Relief Fund for firemen and policemen under Laws, 1930, Chapter 55, see § 21-29-237.

Employers required to pick up member contributions required by this section for all compensation earned after January 1, 1989, see § 21-29-305.

JUDICIAL DECISIONS

1. In general.

Section 21-29-237 providing that firemen and policemen employed after adoption of municipal resolution in accordance with § 21-29-17(c) shall not become members of disability and relief fund for firemen and policemen is not limited by "operating under provisions of this article" in 21-29-17(c) so as to preclude municipality which had not previously had plan operating under §§ 21-29-1 et seq. from placing firemen and policemen employed after specified date in such a plan in lieu of previously existing plan under §§ 21-29-201 et seq.; nor does placement of firemen and policemen employed after specified date in different plan with lower benefits than those provided to previously employ firemen and policemen violate equal protection clause of Fourteenth Amendment to U.S. Constitution. Jackson Firefighters Ass'n Local 87 v. City of Jackson, 736 F.2d 209 (5th Cir. 1984).

If the Board of General Retirement System had intended to make the contention that the allegations of the employee's petition for duty disability in respect to his having been totally and permanently disabled to work were not correct, the board should have raised the question at a hearing on the employee's application. Smith v. Board of Gen. Retirement Sys., 224 Miss. 13, 79 So. 2d 447 (1955), error overruled 224 Miss. 13, 80 So. 2d 46.

Under the General Municipal Employees' Retirement Act, a municipal employee became a member of retirement system upon the approval by the board of his instalment payment plan of making the contributions to the retirement fund, and he would remain a member of the system until he became a beneficiary or died, since he did not separate himself from the service within the meaning of the statute relating to circumstances under which membership ceases. Smith v. Board of Gen. Retirement Sys., 224 Miss. 13, 79 So. 2d 447 (1955), error overruled 224 Miss. 13, 80 So. 2d 46.

§ 21-29-19. Cessation of membership.

(a) Except as otherwise provided in this article, should a member separate from the service of an employer or should he become a beneficiary or die, he shall thereupon cease to be a member and any prior service and membership service which may be credited to his service account at the time of his separation from the service of the employer shall be forfeited by him. Should such person again become an employee of the same employer within a period of five (5) years following the date of his last separation from the service of such employer, he shall again become a member of the retirement system, if not otherwise by this article prevented, conditioned on his redepositing at time of reemployment, and not afterwards, any part of his accumulated contributions theretofore withdrawn from the employees' savings fund, and any prior service and membership service which may have been credited to him at the time of his separation from service shall be restored to him. However, that in the case of the reemployment of a duty disability retirant neither the limitation of five (5) years nor the redepositing of any sum withdrawn from the employees' savings fund shall apply.

(b) The provisions of subsection (a) shall not apply to any employees of a municipality who are employed after adoption of a resolution in accordance with the provisions of subsection (c) of Section 21-29-17. However, under the provisions of the agreement between the municipality and the public employees' retirement system, after the employee has been actively employed for a period of four (4) years and reported as a member of the public employees' retirement system of Mississippi, he may pay the employee contributions, the employer contributions and interest as determined by the public employees' retirement system of Mississippi based on the earnings during the previous period of service with the municipality and receive creditable service for such prior service in the public employees' retirement system of Mississippi.

SOURCES: Codes, 1942, § 3652.3-19; Laws, 1948, ch. 386, § 19; Laws, 1976, ch. 463, § 2, eff from and after passage (approved May 22, 1976).

Cross References — Establishment of employees' saving fund, see § 21-29-23.

JUDICIAL DECISIONS

1. In general.

If the Board of General Retirement System had intended to make the contention that the allegations of the employee's petition for duty disability in respect to his having been totally and permanently disabled to work were not correct, the board should have raised the question at a hearing on the employee's application. Smith v. Board of Gen. Retirement Sys., 224 Miss. 13, 79 So. 2d 447 (1955), error overruled 224 Miss. 13, 80 So. 2d 46.

Under the General Municipal Employees' Retirement Act, a municipal employee became a member of retirement system upon the approval by the board of his instalment-payment plan of making the contributions to the retirement fund, and he would remain a member of the system until he became a beneficiary or died, since he did not separate himself from the service within the meaning of the statute relating to circumstances under which membership ceases. Smith v. Board of Gen. Retirement Sys., 224 Miss. 13, 79 So. 2d 447 (1955), error overruled 224 Miss. 13, 80 So. 2d 46.

§ 21-29-21. Refunds to members withdrawing from service.

Should any member cease to be an employee before becoming eligible to receive either a service or disability retirement allowance as provided by this article, for reasons other than becoming a beneficiary or his death, he thereafter, at any time while not a member of the system, may request in writing, of the board a refund to him of his accumulated contributions, whereupon one hundred percent (100%) of his accumulated contributions then credited to his individual account in the employees' savings fund, less and except all interest credited to his individual account, shall be refunded to him within one (1) year from the filing of the request. However, from the date of separation of any employee, no further interest shall be credited to his individual account in said fund by the board unless and until such employee again becomes a member of the retirement system.

Should any former member, who has accumulated contributions remaining in the employees' savings fund, die, or any member die before his retirement becomes effective, one hundred percent (100%) of the amount of his accumulated contributions standing to his credit in the employees' savings fund, including the accumulated interest therein at the rate of one percent (1%) per annum, at the time of his death shall be paid to such person or persons as shall have been nominated by written designation duly executed and filed with the board. If there be no such designated person or persons, then one hundred percent (100%) of the amount of his accumulated contributions shall be paid to his legal representative. However, such payments shall be postponed, at the discretion of the board, for not more than eighteen (18) months.

SOURCES: Codes, 1942, § 3652.3-20; Laws, 1948, ch. 386, § 20; Laws, 1972, ch. 370, § 8; Laws, 1987, ch. 511, § 5, eff from and after April 30, 1987.

Cross References — Establishment of employees' saving fund, see § 21-29-23.

§ 21-29-23. Funds.

All funds provided for herein shall be part of the public funds of the Public Employees' Retirement System and shall be kept in such way as it is required by law to keep its funds. All allowances or withdrawals from such funds shall be drawn against such funds by the rules and regulations of the Public Employees' Retirement System. All securities purchased with money of the various funds under this article shall be purchased in the name of the Public Employees' Retirement System and held as are other securities of the Public Employees' Retirement System. The Public Employees' Retirement System shall maintain separate municipal accounts for each fund. The following funds shall be set up by any municipality operating under the provisions of this article:

(a) **Employees' saving fund.** — The employees' saving fund shall be the fund in which shall be accumulated the contribution from the compensation of the members and the contributions of members who have prior service to provide for the maintenance, by the clerk of the employer, of an individual account with each member showing the amount of the member's contributions credited to his account and showing interest credited to his account as by the board directed. The portion of the accumulated contributions of a member returned to him upon his withdrawing from service, or paid to his designated beneficiary or legal representative in event of his death, as provided in Sections 21-29-19 and 21-29-21, shall be paid from the employees' saving fund and charged against his individual account therein and the balance then standing in his name in his individual account in said fund shall be transferred to the retirement reserve fund and his individual account closed. The contribution of each member to the employees' saving fund, beginning with the effective date of the retirement system as fixed by ordinance of the governing body, shall be four percent (4%) of his compensation. The employer shall cause the said contribution to be deducted from the cash compensation of each member on each and every payroll period, so long as he remains a member of the retirement system. Every member shall be deemed to consent and agree to the deductions made and provided for herein, and his receipt for his full compensation and payment less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such member during the period covered by such payment, except as to benefits provided under this article. The employer shall, within five (5) days following the end of each calendar month, forward the member contributions deducted from the compensation of each member during the preceding calendar month to the Public Employees' Retirement System, to be placed in the employees' saving fund.

(b) **Retirement reserve fund.** — The Public Employees' Retirement System shall place in the retirement reserve fund all taxes levied and collected pursuant to the provisions of Section 21-29-27. All retirement and disability allowances shall be paid from this fund.

(c) **Income Fund.** — All interest and other income derived from the deposits and investments authorized by this article shall be paid into the income fund.

The board shall annually allow interest for the preceding year to the individual accounts of members of the employees' savings fund based on the average interest and income received from the investment and deposit of the moneys of the employees' savings fund and the retirement reserve fund, provided that the allowed interest on contributions made by members within any one (1) year shall be computed, beginning on the first day of the fiscal year next following, and shall be computed at the end of the fiscal year. Within thirty (30) days after the end of each fiscal year the allowed interest on the accounts in the employees' savings fund shall be credited to the individual accounts of the members and the total thereof placed in the employees' savings fund and any balance of such interest and income shall be placed in the retirement reserve fund. All costs incidental to the investment of funds shall be paid out of this fund.

SOURCES: Codes, 1942, § 3652.3-08; Laws, 1948, ch. 386, § 8; Laws, 1987, ch. 511, § 6, eff from and after April 30, 1987.

Cross References — Paying expenses of operating retirement system, see § 21-29-25.

JUDICIAL DECISIONS

1. In general.

General Municipal Employees' Retirement Act does not require the filing of an application for duty disability before his service as an employee has terminated. Smith v. Board of Gen. Retirement Sys., 224 Miss. 13, 79 So. 2d 447 (1955), error overruled 224 Miss. 13, 80 So. 2d 46.

RESEARCH REFERENCES

Am Jur. 60A Am. Jur. 2d, Pensions and Retirement Funds §§ 1169 et seq.

63C Am. Jur. 2d, Public Officers and Employees §§ 177, 178.

CJS. 62 C.J.S., Municipal Corporations §§ 863-881.

67 C.J.S., Officers and Public Employees §§ 421-432.

§ 21-29-25. Expenses of operation of retirement system.

All expenses of the operation of the retirement system shall be paid out of the retirement reserve fund provided by Section 21-29-23. The Public Employees' Retirement System is hereby authorized to deduct two percent (2%) of all income, exclusive of employee contributions, to be transferred to the expense fund of the Public Employees' Retirement System of Mississippi to defray the costs of administering the fund.

SOURCES: Codes, 1942, § 3652.3-25; Laws, 1948, ch. 386, § 25; Laws, 1987, ch. 511, § 7, eff from and after April 30, 1987.

§ 21-29-27. Taxes to meet system requirements; transfer of funds.

(1) Except as otherwise provided in subsection (2) of this section, the governing body of a municipality, after the passage of the ordinance provided for in Section 21-29-5, shall annually levy a tax as certified by the Public Employees' Retirement System on the taxable property within the municipality or use other funds available, to enable it to meet the requirements of the retirement system. The levy made, or other funds made available, for the municipality's contribution to the system shall be in an amount sufficient to make the system actuarially sound. The tax herein authorized is in addition to all other taxes authorized by law, and may be increased by no more than one-half (½) mill per year as certified by the Public Employees' Retirement System; however, if any levy to pay debt service on bonds issued under Section 31-25-21 as described in subsection (2) of this section is reduced for any year as a result of payment of the bonds or otherwise, the levy under this subsection (1) for such year may be increased by an amount, in addition to the one-half

(½) mill otherwise authorized, not to exceed the reduction for such year in the millage levied to pay debt service on the bonds.

(2) In addition to, or in lieu of, the method of funding provided for in subsection (1) of this section, the municipality may fund or assist in funding the retirement system through the use of revenue bonds issued pursuant to Section 31-25-21. Any tax levied to service the debt on such bonds shall not be included in the ten percent (10%) limitation on increases under Section 27-39-321.

(3) Each municipality with a general municipal employees' retirement fund shall be provided an actuarial study of the fund at least every four (4) years by the Public Employees' Retirement System, which shall report the findings to the Legislature of the State of Mississippi. The first such study shall be filed with the Legislature in January 1980.

(4) The Board of Trustees of the Public Employees' Retirement System, when any municipality has enacted an enabling ordinance as provided in Sections 21-29-5 and 21-29-101, upon a finding that either the municipal employees' retirement system or the disability and relief fund for firemen and policemen is not funded in an actuarially sound manner which shall be spread upon the minutes of the board, may by order provide that the revenue or a portion thereof produced by the levy authorized for one (1) system be diverted to fund the less actuarially sound system within the same municipality. No transfer may be made of funds from one (1) municipality to another.

(5) The municipality and the Board of Trustees of the Public Employees' Retirement System may enter into such contracts and agreements as are deemed necessary to implement the provisions of this section, including, but not limited to, contracts and agreements addressing the use, application and investment of proceeds of bonds issued under Section 31-25-21 and earnings thereon and the relative rights and obligations of the municipality and the Public Employees' Retirement System during the period that the bonds are outstanding and thereafter.

SOURCES: Codes, 1942, § 3652.3-09; Laws, 1948, ch. 386, § 9; Laws, 1976, ch. 463, § 3; Laws, 1984, ch. 441, § 1; Laws, 1985, ch. 536, § 6; Laws, 1986, ch. 509, § 1; Laws, 1987, ch. 511, § 8; Laws, 1994, ch. 548, § 2; Laws, 1997, ch. 506, § 1, eff from and after passage (approved April 4, 1997).

Cross References — Establishment of the retirement reserve fund, see § 21-29-23.

Discontinuing, reducing, or reassessing taxes to meet requirements of retirement system, see § 21-29-29.

Funding of firemen's and policemen's disability and relief funds, see § 21-29-117.

RESEARCH REFERENCES

Am Jur. 60A Am. Jur. 2d, Pensions and Retirement Funds §§ 1, 2 et seq.

§ 21-29-29. Discontinuance, reduction, or reassessment of taxes.

When the amount of funds derived from the tax levied pursuant to Section 21-29-27 is sufficient to care for current needs, requirements, and necessities, the governing body of said municipality is authorized, empowered and directed to discontinue entirely or reduce the tax rate herein provided until such time as financial necessity creates a demand for the reassessment of said tax. However, when and if the tax collections as herein provided, are discontinued, said tax shall be reassessed when necessity requires, without the necessity of an election. The governing body of the municipality may take action only upon certification from the Board of Trustees of the Public Employees' Retirement System.

SOURCES: Codes, 1942, § 3652.3-10; Laws, 1948, ch. 386, § 10; Laws, 1987, ch. 511, § 9, eff from and after April 30, 1987.

Cross References — Discontinuance and reinstatement of tax for firemen's and policemen's disability and relief funds, see § 21-29-119.

§ 21-29-31. Service retirement.

After the expiration of four (4) years from the effective date of an employer's operation under this article, any member who has been an employee of the employer, to whom application is made, for twenty (20) years or more, whether continuous or not, provided the last seven (7) years of which service shall have been continuous, may retire upon his written application to the board setting forth at what time, not less than thirty (30) nor more than ninety (90) days subsequent to the filing thereof, he desires to be retired. The board shall grant him the benefits under Section 21-29-33 to which he is entitled because of the service retirement. It shall be mandatory that any member retire after he attains the age of seventy (70) years.

SOURCES: Codes, 1942, § 3652.3-11; Laws, 1948, ch. 386, § 11; Laws, 1972, ch. 370, § 1, eff from and after passage (approved April 26, 1972).

Cross References — Computation of service retirement allowance, see § 21-29-33.

Payment of benefits to dependents of members who die after having completed twenty years' service as required by this section, see § 21-29-45.

Restoration of teacher's service credit after withdrawal of contributions, see appendix following § 25-11-201.

RESEARCH REFERENCES

ALR. Disciplinary suspension of public employee as affecting computation of length of service for retirement or pension purposes. 6 A.L.R.2d 506.

Am Jur. 60A Am. Jur. 2d, Pensions and Retirement Funds §§ 1192 et seq., 1711 et seq.

63C Am. Jur. 2d, Public Officers and Employees §§ 177, 178.

CJS. 62 C.J.S., Municipal Corporations §§ 863-881.

67 C.J.S., Officers and Public Employees §§ 421-432.

§ 21-29-33. Service retirement allowance.

Upon retirement from service as provided in Section 21-29-31 a member shall receive a service retirement allowance for the remainder of his life, payable monthly, which allowance shall be a sum equal to fifty percent (50%) of his average monthly salary for the last four (4) years of service immediately prior to retirement; provided, however, that upon retirement from service in any municipality having a commission form of government on March 31, 1948, as provided in Section 21-29-5 and having a separate firemen and policemen retirement system and having a population not in excess of 48,000 according to the 1980 decennial census, which municipality has established a retirement system according to the provisions of this chapter, the service retirement allowance shall be based upon the average monthly salary for the last two (2) years of service immediately prior to retirement. Any member who has been in paid service for longer than twenty (20) years shall be entitled to receive additional payments for life in a sum equal to one and seven-tenths percent (1.7%) of the average monthly salary received by such member in the two-year period next preceding the filing of said application for each full year of service in excess of twenty (20) years' service. However, no retired payment to any member shall exceed sixty-six and two-thirds percent (66-⅔%) of the average monthly salary received by a member for the four-year or two-year period, as the case may be, next preceding the filing of said application. Periods of time in which a member may have been inactive on account of physical or mental disability shall not be excluded in computing the twenty-year period and the seven-year period hereinbefore mentioned, provided the employee continues to contribute his share to the program based on the average of his last two (2) months' compensation. This contribution shall continue during the total time the employee shall be inactive.

SOURCES: Codes, 1942, § 3652.3-12; Laws, 1948, ch. 386, § 12; Laws, 1972, ch. 370, § 2; Laws, 1985, ch. 399, § 1, eff from and after passage (approved March 25, 1985).

Cross References — Exemption from local taxes, garnishment, attachment or other process, see §§ 21-29-51 and 21-29-307.

Eligibility for service retirement, see § 21-29-31.

ATTORNEY GENERAL OPINIONS

"Upon retirement from service" as found in Section 21-29-33, means termination of employment as employee of municipality in position that would have been covered by General Municipal Employees' Retirement System or by Public Employees' Retirement System after closure of General Municipal Employees' Retirement System to new members. Snowden Aug. 26, 1993, A.G. Op. #93-0538.

Nothing prohibits retired Employee from being reemployed by City; however, since employee would no longer be retired, benefits from General Municipal Employees' Retirement System would be suspended during such period of reemployment; further, if so reemployed, Employee would be covered by Public Employees' Retirement System on same terms and conditions as all other municipal employees. Snowden Aug. 26, 1993, A.G. Op. #93-0538.

RESEARCH REFERENCES

Am Jur. 60A Am. Jur. 2d, Pensions and Retirement Funds §§ 1228 et seq.

63C Am. Jur. 2d, Public Officers and Employees §§ 177, 178.

CJS. 67 C.J.S., Officers and Public Employees §§ 421-432.

§ 21-29-35. Duty disability retirement.

Upon application of a member in service of the employer, any member who has become totally and permanently incapacitated for duty as the natural and proximate result of the actual performance of duty of the employer, without wilful negligence on his part, may be retired by the board on a duty disability retirement allowance effective thirty days after the filing of an application in writing with the board. However, the physician or physicians selected by the board to examine the member shall certify that such member is presumably permanently and totally disabled from engaging in any gainful occupation for compensation or profit, that under the facts as to the cause of disability, as certified by the board, the member's disability could have with reasonable probability resulted, in such physician's opinion, and that such member should be retired.

SOURCES: Codes, 1942, § 3652.3-13; Laws, 1948, ch. 386, § 13.

Cross References — Computation of duty disability retirement allowance, see § 21-29-37.

Qualifying for non-duty disability retirement, see § 21-29-39.

Re-examination of duty disability retirants and revocation of their allowance for gainful employment, see § 21-29-43.

JUDICIAL DECISIONS

1. In general.

Where a municipal employee became permanently disabled to perform the duties of his employment and he has not paid all his required instalments, based upon an instalment payment plan which has been approved by the board, but he did make a tender of amount of instalments due with his application for disability, the employee's application should have been granted and he was entitled to disability. Smith v. Board of Gen. Retirement Sys., 224 Miss. 13, 79 So. 2d 447 (1955), error overruled 224 Miss. 13, 80 So. 2d 46.

General Municipal Employees' Retirement Act does not require the filing of an application for duty disability before his service as an employee has terminated. Smith v. Board of Gen. Retirement Sys., 224 Miss. 13, 79 So. 2d 447 (1955), error overruled 224 Miss. 13, 80 So. 2d 46.

If the Board of General Retirement System had intended to make the contention that the allegations of the employee's petition for duty disability in respect to his having been totally and permanently disabled to work were not correct, the board should have raised the question at a hearing on the employee's application. Smith v. Board of Gen. Retirement Sys., 224 Miss. 13, 79 So. 2d 447 (1955), error overruled 224 Miss. 13, 80 So. 2d 46.

Under the General Municipal Employees' Retirement Act, a municipal employee became a member of retirement system upon the approval by the board of his instalment payment plan of making the contributions to the retirement fund, and he would remain a member of the system until he became a beneficiary or died, since he did not separate himself from the service within the meaning of the statute relating to circumstances under which membership ceases. Smith v. Board of Gen. Retirement Sys., 224 Miss. 13, 79 So. 2d 447 (1955), error overruled 224 Miss. 13, 80 So. 2d 46.

RESEARCH REFERENCES

ALR. Misconduct as affecting right to pension or retention of position in retirement system, 76 A.L.R.2d 566.

Am Jur. 60A Am. Jur. 2d, Pensions and Retirement Funds §§ 1207 et seq., 1711 et seq.

63C Am. Jur. 2d, Public Officers and Employees §§ 177, 178.

CJS. 67 C.J.S., Officers and Public Employees §§ 421-432.

§ 21-29-37. Duty disability retirement allowance.

Upon retirement for duty disability, prior to becoming eligible for service retirement, as provided by Section 21-29-35, a member shall receive a duty disability retirement allowance, payable monthly, in a sum equal to fifty percent (50%) of his monthly salary from the employer at the time when the injury was sustained or the sickness occurred. This amount shall be paid to the member throughout such total disability for service. If the municipality pays a salary to such member in an amount equal to or in excess of the amount to be paid under this section, said member shall not be entitled to any payments under this section for the period of time during which such salary is paid.

SOURCES: Codes, 1942, § 3652.3-14; Laws, 1948, ch. 386, § 14; Laws, 1972, ch. 370, § 3, eff from and after passage (approved April 26, 1972).

Cross References — Exemption from local taxes, garnishment, attachment or any other process, see §§ 21-29-51 and 21-29-307.

RESEARCH REFERENCES

Am Jur. 60A Am. Jur. 2d, Pensions and Retirement Funds §§ 1228 et seq.

63C Am. Jur. 2d, Public Officers and Employees §§ 177, 178.

CJS. 67 C.J.S., Officers and Public Employees §§ 421-432.

§ 21-29-39. Non-duty disability retirement.

Upon application of a member in service of the employer, any member who has had not less than five (5) years nor more than twenty (20) years' service with the employer and who has become totally and permanently incapacitated for duty, as a result of causes occurring other than in the performance of his duty, shall be retired by the board not less than thirty (30) nor more than ninety (90) days next following the date of filing such application, on a non-duty disability retirement allowance. Any such disability shall be certified to the board in the same manner as provided in Section 21-29-35.

SOURCES: Codes, 1942, § 3652.3-15; Laws, 1948, ch. 386, § 15; Laws, 1972, ch. 370, § 4, eff from and after passage (approved April 26, 1972).

Cross References — Computation of non-duty disability retirement allowance, see § 21-29-41.

Re-examination of non-duty disability retirants and revocation of their allowance for gainful employment, see § 21-29-43.

RESEARCH REFERENCES

ALR. Requiring submission to physical examination or test as violation of constitutional rights. 25 A.L.R.2d 1407.

Misconduct as affecting right to pension or retention of position in retirement system. 76 A.L.R.2d 566.

Am Jur. 60A Am. Jur. 2d, Pensions and Retirement Funds §§ 1207 et seq., 1711 et seq.

63C Am. Jur. 2d, Public Officers and Employees §§ 177, 178.

CJS. 67 C.J.S., Officers and Public Employees §§ 421-432.

§ 21-29-41. Non-duty disability retirement allowance.

Upon retirement for nonduty disability as provided in Section 21-29-39, a member shall receive for each year's active service one-fortieth (1/40) of the average monthly salary or compensation received by such member from the employer in the four-year or two-year period, as the case may be, next preceding the injury or illness causing such disability.

SOURCES: Codes, 1942, § 3652.3-16; Laws, 1948, ch. 386, § 16; Laws, 1972, ch. 370, § 5; Laws, 1985, ch. 399, § 2, eff from and after passage (approved March 25, 1985).

Cross References — Exemption from local taxes, garnishment, attachment or other process, see §§ 21-29-51 and 21-29-307.

RESEARCH REFERENCES

Am Jur. 60A Am. Jur. 2d, Pensions and Retirement Funds §§ 1228 et seq.

63C Am. Jur. 2d, Public Officers and Employees §§ 177, 178.

CJS. 67 C.J.S., Officers and Public Employees §§ 421-432.

§ 21-29-43. Re-examination of disability retirants; revocation of allowance for gainful employment.

(1) Once a year during the first five (5) years following retirement of a member on either duty or non-duty disability retirement allowance, and once in every three-year period thereafter, the board may require any disability beneficiary who has not completed twenty (20) years' service under the terms and provisions of this article to undergo a medical examination at the place of residence of the beneficiary or other place mutually agreed upon, to be made by a physician or physicians designated by the board. Should any disability beneficiary who has not completed twenty (20) years' service under the terms and provisions of this article refuse to submit to at least one (1) medical examination in any such year by a physician or physicians designated by the board, his allowance shall be discontinued until his withdrawal of such refusal, and should his refusal continue for one (1) year, all his rights in and to any and all retirement allowances under the retirement system shall be revoked by the board.

(2) Should the examining physician or physicians report and certify to the board that a disability retirant has recovered and is able to engage in a gainful occupation, and should the board concur in such report, then the disability retirement allowance shall cease. In the case of a duty disability retirant only, upon again becoming an employee of the employer, he shall again become a member of the retirement system and the time during which he was a disability retirant shall be counted as time in the service of the employer for the purpose of service retirement.

(3) Any disability retirant, who has not completed twenty (20) years' service under this article prior to retirement, who secures gainful employment over a period of three (3) consecutive months shall not thereafter receive any disability retirement allowance and it shall be the duty of the board to revoke its order directing the payment of a retirement allowance to such person.

SOURCES: Codes, 1942, § 3652.3-18; Laws, 1948, ch. 386, § 18; Laws, 1972, ch. 370, § 7, eff from and after passage (approved April 26, 1972).

RESEARCH REFERENCES

ALR. Requiring submission to physical examination or test as violation of constitutional rights. 25 A.L.R.2d 1407.

Am Jur. 60A Am. Jur. 2d, Pensions and Retirement Funds §§ 1176, 1187-1189, 1231.

63C Am. Jur. 2d, Public Officers and Employees §§ 177, 178.

CJS. 67 C.J.S., Officers and Public Employees §§ 421-432.

§ 21-29-45. Death of member.

[For any municipality that has not elected to authorize the continuation of or reinstatement of spouse retirement benefits under the provisions of Section 21-29-329, this section shall read as follows:]

Upon proper application to the general retirement board, the benefits to dependents of deceased members and retirants shall be paid as follows:

(a) If any member dies for causes other than the performance of duty in the service of the municipality before completing five (5) years' service, there shall be paid to his or her designated beneficiary or his or her legal representative, if no beneficiary has been designated, from the employees' savings fund the sum equal to the amount accumulated in his or her individual account.

(b) If any member dies who has not had less than five (5) and not more than twenty (20) years' service with the municipality, there shall be paid to the spouse, from the retirement reserve fund, for each year's active service, not to exceed a period of twenty (20) years, one-fortieth (1/40) of the average monthly salary or compensation received by the member in the four-year or two-year period, as the case may be, next preceding the death, for the use of the spouse and the child or children of the deceased member under the age of eighteen (18) years, so long as the spouse remains unmarried. If, after the marriage of the spouse, there remains a child or children of the deceased member under the age of eighteen (18) years, the payments shall continue to be made to a parent or lawful custodian of the child or children without the necessity of appointment as guardian for the benefit of the child or children, so long as the child or children are under the age of eighteen (18) years. After the death or marriage of the spouse, all payments to the spouse shall cease, and after the death or attainment of eighteen (18) years of any child or children of the deceased, all payments to the child or children over eighteen (18) years of age shall cease. If the deceased member is not survived by a spouse or child or children under the age of eighteen (18) years, but is survived by a father or a mother dependent upon him or her, the payments shall continue to be made to the dependent father or mother, or both, so long as each lives. The word "dependent," as used in this section, shall mean "wholly dependent," as determined by the retirement board.

(c) If any member dies after having completed twenty (20) years' service as required by Section 21-29-31, or if any retirant dies, there shall be paid from the retirement reserve fund to the spouse or the dependents designated in paragraph (b) of this section, the amount of benefits or retirement pay equal to the sum being paid to the deceased member or retirant, or which would have been paid to the deceased member or retirant if he or she had applied for benefits under this section, on the date of his or her death.

(d) If any member dies before becoming eligible to receive benefits under this article as a result of the performance of duty to the municipality, there shall be paid to the spouse or dependents designated in paragraph (b) of this section from the retirement reserve fund, an amount equal to fifty percent (50%) of the monthly salary of the deceased member on the date of his or her death. This amount shall be paid to the same beneficiaries and for the same period of time as those beneficiaries and periods of time set forth in paragraph (b) of this section.

[For any municipality that has elected to authorize the continuation of or reinstatement of spouse retirement benefits under the provisions of Section 21-29-329, this section shall read as follows:]

Upon proper application to the general retirement board, the benefits to dependents of deceased members and retirants shall be paid as follows:

(a) If any member dies for causes other than the performance of duty in the service of the municipality before completing five (5) years' service, there shall be paid to his or her designated beneficiary or his or her legal representative, if no beneficiary has been designated, from the employees' savings fund the sum equal to the amount accumulated in his or her individual account.

(b) If any member dies who has not had less than five (5) and not more than twenty (20) years' service with the municipality, there shall be paid to the spouse, from the retirement reserve fund, for each year's active service, not to exceed a period of twenty (20) years, one-fortieth (1/40) of the average monthly salary or compensation received by the member in the four-year or two-year period, as the case may be, next preceding the death, for the use of the spouse and the child or children of the deceased member under the age of eighteen (18) years, so long as the spouse lives. If, after the death of the spouse, there remains a child or children of the deceased member under the age of eighteen (18) years, the payments shall continue to be made to a parent or lawful custodian of the child or children without the necessity of appointment as guardian for the benefit of the child or children, so long as the child or children are under the age of eighteen (18) years. After the death of the spouse, all payments to the spouse shall cease, and after the death or attainment of eighteen (18) years of any child or children of the deceased member, all payments to the child or children over eighteen (18) years of age shall cease. If the deceased member is not survived by a spouse, child or children under the age of eighteen (18) years, but is survived by a father or a mother dependent upon him or her, the payments shall continue to be made to the dependent father or mother, or both, so long as each lives. The word "dependent," as used in this section, shall mean 'wholly dependent,' as determined by the retirement board.

(c) If any member dies after having completed twenty (20) years' service as required by Section 21-29-31, or if any retirant dies, there shall be paid from the retirement reserve fund to the spouse or the dependents designated in paragraph (b) of this section, the amount of benefits or retirement pay equal to the sum being paid to the deceased member or retirant, or which would have been paid to the deceased member or retirant if he or she had applied for benefits under this section, on the date of his or her death.

(d) If any member dies before becoming eligible to receive benefits under this article as a result of the performance of duty to the municipality, there shall be paid to the spouse or dependents designated in paragraph (b) of this section from the retirement reserve fund, an amount equal to fifty percent (50%) of the monthly salary of the deceased member on the date of his or her death. This amount shall be paid to the same beneficiaries and for the same period of time as those beneficiaries and periods of time set forth in paragraph (b) of this section.

SOURCES: Codes, 1942, § 3652.3-17; Laws, 1948, ch. 386, § 17; Laws, 1972, ch. 370, § 6; Laws, 1985, ch. 399, § 3; Laws, 2004, ch. 561, § 10, eff from and after July 1, 2004.

Cross References — Exemption from local taxes, garnishment, attachment or other process, see §§ 21-29-51 and 21-29-307.

RESEARCH REFERENCES

ALR. Effect of divorce, annulment or remarriage on widow's pension or bonus rights or social security benefits. 85 A.L.R.2d 242.

Am Jur. 60A Am. Jur. 2d, Pensions and Retirement Funds §§ 1197 et seq., 1207, 1209, 1244 et seq.

63C Am. Jur. 2d, Public Officers and Employees §§ 177, 178.

CJS. 67 C.J.S., Officers and Public Employees §§ 421-432.

§ 21-29-47. Appeal.

Appeal may be taken from any decision of the board by any member of the system or other person entitled to the benefits under this article to the chancery court. However, no appeal may be taken from any finding or decision of the board after the expiration of one year from the date of the finding or decision.

SOURCES: Codes, 1942, § 3652.3-22; Laws, 1948, ch. 386, § 22.

JUDICIAL DECISIONS

1. In general.

The Board of the General Retirement System waived its right to have employee examined by a physician of its own selection by its inaction in that regard throughout the period of the illness of the employee up to and including the date of the hearing before the board and the trial in the chancery court. Smith v. Board of Gen. Retirement Sys., 224 Miss. 13, 79 So. 2d 447 (1955), error overruled 224 Miss. 13, 80 So. 2d 46.

RESEARCH REFERENCES

Am Jur. 60A Am. Jur. 2d, Pensions and Retirement Funds §§ 1253-1255.

63C Am. Jur. 2d, Public Officers and Employees §§ 177, 178.

CJS. 67 C.J.S., Officers and Public Employees §§ 421-432.

§ 21-29-49. Proration of payments.

Should the retirement reserve fund at any time be insufficient to make all payments properly payable therefrom, the amounts available in said fund shall be properly prorated until such time as amounts available therein may be sufficient to make all payments payable therefrom in full.

SOURCES: Codes, 1942, § 3652.3-23; Laws, 1948, ch. 386, § 23.

§ 21-29-51. Rights to any benefit under this Article governed by Section 21-29-307.

The right of a person to an annuity, a retirement allowance or benefit, or to the return of contributions, or to any optional benefit or any other right accrued or accruing to any person under the provisions of this article, any retirement system and the moneys in any retirement system created by this article, shall be governed by the provisions of Section 21-29-307, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 3652.3-21; Laws, 1948, ch. 386, § 21; Laws, 1989, ch. 503, § 4, eff from and after July 1, 1989.

RESEARCH REFERENCES

ALR. Employee retirement pension benefits as exempt from garnishment, attachment, levy, execution, or similar proceedings. 93 A.L.R.3d 711.

What constitutes order made pursuant to state domestic relations law for purposes of qualified domestic relations order exception to antialienation provision of Employee Retirement Income Security Act of 1974 (29 USCS § 1056(d)). 79 A.L.R.4th 1081.

Am Jur. 6 Am. Jur. 2d, Attachment and Garnishment § 146.

§ 21-29-53. Other retirement laws not affected.

The General Municipal Employees' Retirement Law and the provisions thereof shall in no way affect the provisions of Sections 21-29-101 through 21-29-151 of this chapter, establishing the firemen's and policemen's disability and relief fund, or the provisions of Article 5 of Chapter 11 of Title 25 of the Mississippi Code of 1972, concerning the retirement of school teachers.

SOURCES: Codes, 1942, § 3652.3-27; Laws, 1948, ch. 386, § 27.

§ 21-29-55. Effect of change in form of government.

If, at any time, any municipality now covered by this article shall change its form of government, such change shall not affect the authorized retirement system, and this article shall be applicable to such municipality notwithstanding any future change in the form of government.

SOURCES: Codes, 1942, § 3652.3-29; Laws, 1948, ch. 386, § 29.

§ 21-29-57. Vacation and sick leave; payment for unused time.

Nothing in this article shall limit or otherwise restrict the power of the governing body of any municipality that has a retirement system under this article to adopt such vacation and sick leave policies for its employees as it deems necessary. Any such municipality having a vacation and sick leave policy that provides for the payment of unused accumulated annual leave, personal leave or both to employees at the time of their retirement shall be authorized to make such payments to any employee who retires or has retired after September 30, 1991.

SOURCES: Laws, 1992, ch. 394 § 2, eff from and after passage (approved April 27, 1992).

RESEARCH REFERENCES

Am Jur. 60A Am. Jur. 2d, Pensions and Retirement Funds § 1236.

ARTICLE 3.

FIREMEN'S AND POLICEMEN'S DISABILITY AND RELIEF FUNDS.

SEC.

21-29-101. Disability and relief fund; exception and application; discontinuance of new memberships.
21-29-103. Repealed.
21-29-105. Administration of disability and relief funds; advisory boards.
21-29-107. Powers and duties of Board of Trustees.
21-29-109 and 21-29-111. Repealed.
21-29-113. Board of disability and relief appeals.
21-29-115. Appealing decisions of board of disability and relief.
21-29-117. Funding; tax or use of other funds, contributions, and salary deductions.
21-29-118. Tax proceeds transferred to Public Employees' Retirement System.
21-29-119. Discontinuance and reinstatement of tax; actuarial study.
21-29-121. Disability and relief fund constitutes special fund; transfer of moneys to Public Employees' Retirement System.
21-29-123. Allowances upon disability and relief fund.
21-29-125. Investment of part of disability and relief fund.
21-29-127. Advancements from general fund to disability and relief fund.
21-29-129. Who entitled to benefits.
21-29-131. Service records to be kept.
21-29-133. Disability benefits; injury or illness resulting from discharge of duties.
21-29-135. Disability benefits; illness or injury resulting from other than discharge of duties.
21-29-137. Physical and mental examinations.
21-29-139. Retirement benefits.
21-29-141. Refunds.
21-29-143. Loss of benefits in case of transfer.
21-29-145. Death benefits where death results from discharge of duty or after retirement.
21-29-147. Death benefits where death results from other causes.
21-29-149. Suit shall not be filed in cases of insufficient funds.

21-29-151. Application.

§ 21-29-101. Disability and relief fund; exception and application; discontinuance of new memberships.

Except as otherwise provided in this section, in every city of the State of Mississippi having a population of ten thousand (10,000) or more, according to the last federal census, or any subsequent federal census, and in which there is a paid police department and/or fire department, it shall be the duty of the governing authorities of said municipality to create and maintain a fund known as the "disability and relief fund for firemen and policemen," hereafter to be known as "said fund," which shall be maintained for the benefit of the persons hereinafter named, and shall be derived, raised and administered in the manner provided in this article, except no such fund known as the "disability and relief fund for firemen and policemen" shall be created by any municipality after March 1, 1976, unless approved by an amendment to this article by the Legislature of the State of Mississippi. Further, no new members may be joined by the fund after July 1, 1987, and all new employees of the police department and/or fire department of any municipality having such funds shall become members of the Public Employees' Retirement System of Mississippi after July 1, 1987.

Any reference in other sections of this article to members of the fire or police department shall be defined to include only the members of the disability and relief fund for firemen and policemen of the municipality. The fund for each municipality shall be separately administered.

This section and Sections 21-29-103 through 21-29-151 shall not apply to any municipality wherein the qualified electors of such municipality shall have elected on or before August 6, 1940, pursuant to the then applicable law, not to have such municipality come within the provisions of Sections 21-29-101 to 21-29-151.

SOURCES: Codes, 1942, §§ 3472, 3474; Laws, 1940, ch. 287; Laws, 1960, ch. 427; Laws, 1976, ch. 463, § 4; Laws, 1987, ch. 511, § 10, eff from and after April 30, 1987.

Editor's Note — Section 21-29-103 referred to in this section was repealed by Laws, 1987, ch. 511, § 35, eff from and after April 30, 1987.

Cross References — Applicability of "code charter" provisions, see § 21-7-3.

Continuing disability and relief fund for firemen and policemen under mayor-council form of government, see § 21-8-39.

Continuing disability and relief fund for firemen and policemen under council-manager plan, see § 21-9-81.

Medical and hospital care for injured policemen and firemen, see §§ 21-21-9, 21-25-9, respectively.

Transfers of funds between municipal employees retirement system and disability and relief fund for firemen and policemen when one system is not funded in actuarially sound manner, see § 21-29-27.

General municipal employees' retirement law not affecting firemen's and policemen's disability and relief fund, see § 21-29-53.

Provision that municipality which has established municipal employees' retirement system and disability and relief fund for firemen and policemen may divert funds of one system to the less actuarially sound system, see § 21-29-117.

Qualifications for, and computation of, benefits on account of duty disability, see § 21-29-133.

Qualifications for, and computation of, benefits on account of non-duty disability, see § 21-29-135.

Eligibility for, and computation of, retirement benefits, see § 21-29-139.

Death benefits where death results from discharge of duties or after retirement, see § 21-29-145.

Death benefits where death results from non-duty causes, see § 21-29-147.

Creation of disability and retirement fund in municipalities with population of not less than 3,000, see §§ 21-29-201 et seq.

Required military service not affecting various rights of policemen and firemen, see § 21-29-301.

Creditable service provided for membership service interrupted by qualified military service, see § 21-29-301.

Employers to pick up member contributions to employees' retirement and disability systems, see § 21-29-305.

Schedule for computation of membership service or prior service, see § 21-29-313.

Repayment of refund after reemployment following retirement for purpose of reestablishing contributing membership, see § 21-29-315.

Maximum annual retirement allowance, see § 21-29-317.

Employment-related fringe benefits, see § 21-29-319.

Determination of average monthly base salary and longevity pay, see § 21-29-321.

Board of Trustees of Public Employees' Retirement System assessment of interest on delinquent payments from municipalities whose retirement funds it administers, see § 21-29-327.

Municipalities may adopt resolutions allowing spouses receiving retirement benefits to continue to receive spouse benefits for life, even after remarriage, see § 21-29-329.

Benefits accrued or accruing under the provisions of this article exempt from all taxes, attachment or other process, and unassignable, see § 21-29-307.

Transferring firemen's and law enforcement officers' disability and retirement funds from one jurisdiction to another, see § 25-11-137.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

The imposition of a tax for maintenance of the disability and relief fund provided for by this act is not beyond the legislative power, nor does it constitute class legislation, in view of the fact that the act requires maintenance of a contractual relationship between city and employee and continued availability of the employee. Mayor & Aldermen of Vicksburg v. Crichlow, 196 Miss. 259, 16 So. 2d 749 (1944).

2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

Retirement benefits under this Act [Laws 1940, ch 287] are not gratuities, nor for a private purpose, nor the lending of credit, nor are they extra compensation within the prohibitions of the Constitution. Mayor & Aldermen of Vicksburg v. Crichlow, 196 Miss. 259, 16 So. 2d 749 (1944).

Nor does this act [Laws 1940, ch 287] constitute class legislation, or a violation of the constitutional prohibition against maintaining the salary of an officer after his duties have been taken away, or allowing an officer to hold office or employment without personally devoting his time thereto; nor does it run counter to the requirement that no person shall be elected or appointed to office for life or during good behavior and that the term of all offices shall be for some specified period. Mayor & Aldermen of Vicksburg v. Crichlow, 196 Miss. 259, 16 So. 2d 749 (1944).

Where demurrer of city to petition for writ of mandamus to compel the city officials to comply with the provision of the act providing for retirement benefits for firemen and policemen, was overruled, city was entitled to plead further upon filing affidavit of merits. Mayor & Aldermen of Vicksburg v. Crichlow, 196 Miss. 259, 16 So. 2d 749 (1944).

In mandamus action to compel city to comply with statute providing for retirement benefits for firemen and policemen, affidavit of merits, filed after overruling of demurrer to petition, alleging that petitioner was not of the class of persons entitled to benefits under the act, that city had not complied with the act, and that petitioner had been discharged as a fireman, did not disclose a good and substantial defense, and trial court did not err in striking city's affidavit and plea. Mayor & Aldermen of Vicksburg v. Crichlow, 196 Miss. 259, 16 So. 2d 749 (1944).

Judgment in mandamus action to compel cities to comply with statute providing for retirement benefits for firemen and policemen, that petitioner was entitled to the relief prayed for and to a peremptory writ of mandamus and that he have of the defendants the relief prayed for in his petition, was too broad as assuming to decide the merits of the case, constituting a prejudgment of matters within the discretion of the board, created by the act, and as applying to duties imposed upon the city which could not be enforced by mandamus. Mayor & Aldermen of Vicksburg v. Crichlow, 196 Miss. 259, 16 So. 2d 749 (1944).

RESEARCH REFERENCES

ALR. Disciplinary suspension of public employee as affecting computation of length of service for retirement or pension purposes. 6 A.L.R.2d 506.

Causal connection between fireman's or policeman's performance of official duties and his disability, for purpose of recovering disability benefits. 27 A.L.R.2d 974.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 108, 116, 117, 134, 135.

60A Am. Jur. 2d, Pensions and Retirement Funds §§ 1166 et seq., 1182 et seq.

63A Am. Jur. 2d, Public Officers and Employees §§ 181, 182.

19 Am. Jur. Pl & Pr Forms (Rev), Pensions and Retirement Funds, Forms 1-5 (complaint, petition, or declaration for judicial declaration as to pension rights).

19 Am. Jur. Pl & Pr Forms (Rev), Pensions and Retirement Funds, Form 16 (order directing payment of pension and adoption of resolution to that end).

19 Am. Jur. Pl & Pr Forms (Rev), Pensions and Retirement Funds, Form 17 (motion for summary judgment dismissing claim for pension).

19 Am. Jur. Pl & Pr Forms (Rev), Pensions and Retirement Funds, Forms 6-8 (complaint, petition, or declaration for mandamus to compel payment of pension benefits).

CJS. 67 C.J.S., Officers and Public Employees §§ 421-432.

§ 21-29-103. Repealed.

Repealed by Laws, 1987, ch 511, § 35, eff from and after April 30, 1987. [Codes, 1942, § 3493; Laws, 1940, ch. 287]

Editor's Note — Former § 21-29-103 provided for an election as to continuation of a disability and relief fund.

§ 21-29-105. Administration of disability and relief funds; advisory boards.

The Board of Trustees of the Public Employees' Retirement System of Mississippi shall have operational and administrative control of the funds created herein.

In each municipality there shall be a board to serve in an advisory capacity to the Board of Trustees of the Public Employees' Retirement System with respect to matters concerning the disability and relief fund. Such board shall consist of five (5) members as follows: two (2) shall be elected by the membership of the police department, two (2) shall be elected by the membership of the fire department; and the mayor or his designee shall be an ex officio member. Retired members of the police department and fire department may participate in elections to choose members of the board, and such retired members are also eligible to serve on the board. The term of elected members shall be for four (4) years, and any vacancy in the elected membership shall be filled in the same manner as the original membership was selected.

SOURCES: Codes, 1942, §§ 3478, 3492; Laws, 1940, ch. 287; Laws, 1985, ch. 356, § 1; Laws, 1987, ch. 511, § 11; Laws, 1999, ch. 544, § 15, eff from and after July 1, 1999.

Cross References — Powers and duties of board of trustees, see § 21-29-107.

§ 21-29-107. Powers and duties of Board of Trustees.

The board of trustees shall fix a time for regular meetings in its minutes, and it shall keep minutes of its meetings which shall be public records, subject to the statutes, rules and regulations governing the board of trustees.

The board shall have the power and duty to promptly hear and pass upon all applications of firemen and/or policemen or the beneficiaries of deceased firemen and of deceased policemen for participation in the benefits of said fund. The board may appoint hearing officers to further its duties hereunder. Said board may hear witnesses, administer oaths, find facts, and make decisions in all matters properly before said board, which decisions shall be final except upon appeals in the way hereafter set forth. Said board may order payments made according to the facts found and the provisions of this article, which payments shall be made as far as funds may be available from each separate municipal fund. Said board shall have the power, with the funds they have on hand, to invest and reinvest funds under the provisions of Section 25-11-121. Such funds may be commingled with other system funds for the most advantageous investments; however, each fund shall have separate accounting status. No warrant shall be drawn against said fund without the approval of a majority of said board.

SOURCES: Codes, 1942, § 3478; Laws, 1940, ch. 287; Laws, 1987, ch. 511, § 12, eff from and after April 30, 1987.

Cross References — Administration of disability and relief funds, see § 21-29-105.

Authority to refund contributions to estate of deceased, and to extend benefits to dependent children through age 23, see § 21-29-311.

JUDICIAL DECISIONS

1. In general.

Judgment in mandamus action to compel cities to comply with statute providing for retirement benefits for firemen and policemen, that petitioner was entitled to the relief prayed for and to a peremptory writ of mandamus and that he have of the defendants the relief prayed for in his petition, was too broad as assuming to decide the merits of the case, constituting a prejudgment of matters within the discretion of the board, created by the act, and as applying to duties imposed upon the city which could not be enforced by mandamus. Mayor & Aldermen of Vicksburg v. Crichlow, 196 Miss. 259, 16 So. 2d 749 (1944).

§§ 21-29-109 and 21-29-111. Repealed.

Repealed by Laws, 1987, ch. 511, § 35, eff from and after April 30, 1987.
21-29-109. [Codes, 1942, § 3488; Laws, 1940, ch. 287]
21-29-111. [Codes, 1942, § 3483; Laws, 1940, ch. 287]

Editor's Note — Former § 21-29-109 directed the city to furnish the board of disability and relief with facilities and necessary supplies.

Former § 21-29-111 directed the city attorney to advise and represent the disability and relief board.

§ 21-29-113. Board of disability and relief appeals.

The commissioner of insurance, the attorney general, and the secretary of state of the State of Mississippi, shall be and are constituted a body to be known of the "board of disability and relief appeals," with full duty and power to hear, consider and determine all matters brought before it on appeal from decisions of the boards of disability and relief. Determinations by said appeal board shall be final.

SOURCES: Codes, 1942, § 3479; Laws, 1940, ch. 287.

Cross References — Appealing decisions of board, see § 21-29-115.

RESEARCH REFERENCES

Am Jur. 60A Am. Jur. 2d, Pensions and Retirement Funds §§ 1253-1255.

63A Am. Jur. 2d, Public Officers and Employees §§ 181, 182.

CJS. 67 C.J.S., Officers and Public Employees §§ 421-432.

§ 21-29-115. Appealing decisions of board of disability and relief.

The governing authorities of the city, any applicant for benefits of the disability and relief fund for firemen and policemen, or any two active members of said fire department or any two active members of said police department, being aggrieved at the decision or order of said board of disability and relief of said city, may file with said board of disability and relief, and with said board of disability and relief appeals duplicate copies of a petition for the rehearing of the matter in which said decision or order was made. Within thirty days thereafter said board of disability and relief of said city shall file with said appeal board, true copies of all papers and documents which were before it, all evidence of record before it and a statement of all evidence heard by it and not of record, all certified to be true and correct, whereupon said appeal board shall fix a time for hearing and shall give said disability and relief board of said city, and the petitioner or petitioners for appeal notice of said time for hearing. When the matter shall come on for hearing said appeal board shall have before it all papers, statements, matters and things certified to it by said disability and relief board, as well as such additional evidence and documents as it may hear and receive and upon all of the same shall hear, consider and decide said matter fully and finally according to this article, and the facts. Said appeal board may cause witnesses to be sworn by one of its members, or by any other authority competent to administer oaths. Said appeal board may meet for all purposes at any time in the State of Mississippi when all are present, or upon the call of two members thereof. Said appeal board shall certify its decision to the disability and relief board and the governing authorities of said city, and such decision or order shall be final and binding and the said fund shall be disbursed according thereto. Any suit or other action affecting said fund shall be disbursed according thereto. Any suit or other action affecting said fund shall be by or against said city as custodian of said fund and not against said board.

SOURCES: Codes, 1942, § 3479; Laws, 1940, ch. 287.

Cross References — Board of disability and relief appeals, see § 21-29-113.

RESEARCH REFERENCES

Am Jur. 60A Am. Jur. 2d, Pensions and Retirement Funds §§ 1253-1255.

63C Am. Jur. 2d, Public Officers and Employees §§ 177, 178.

CJS. 67 C.J.S., Officers and Public Employees §§ 421-432.

§ 21-29-117. Funding; tax or use of other funds, contributions, and salary deductions.

(1) Except as otherwise provided for in subsection (2) of this section, the governing authority of said municipality, at the time the levy is made for other municipal taxes, shall annually levy a tax on the taxable property within the said municipality, and the proceeds therefrom shall be forwarded on or before the twentieth of the following month to the Public Employees' Retirement System. The levy made, and the deductions from the salaries of members, shall be in an amount sufficient, but not more than the amount necessary, to make

the system actuarially sound by July 1, 2000, as certified to the municipality by the board. Such tax shall be in addition to any limits set forth in Sections 27-39-301 through 27-39-311, and shall not be included in the ten percent (10%) limitation on increases under Section 27-39-321, nor shall any tax increase exceed one-half (½) mill per year; however, if any levy to pay debt service on bonds issued under Section 31-25-21 as described in subsection (2) of this section is reduced for any year as a result of payment of the bonds or otherwise, the levy under this subsection (1) for such year may be increased by an amount, in addition to the one-half (½) mill otherwise authorized, not to exceed the reduction for such year in the millage levied to pay debt service on the bonds.

(2) In addition to, or in lieu of, the method of funding provided for in subsection (1) of this section, the municipality may fund or assist in funding the retirement system through the use of revenue bonds issued pursuant to Section 31-25-21. Any tax levied to service the debt on such bonds shall not be included in the ten percent (10%) limitation on increases under Section 27-39-321.

(3) In addition, all gifts and donations made by any persons or corporations or by other appropriate levy, and all funds which the municipality may receive from insurance companies as provided for in this article shall be placed in said fund.

(4) In addition, such municipality shall each month deduct from the salary of each member of the disability and relief fund for firemen and policemen not less than seven percent (7%) nor more than ten percent (10%) of the amount thereof and put the amount deducted into said fund. Any increase to an amount in excess of seven percent (7%) shall be in increments of not more than one percent (1%) per annum. No increase from the deduction of seven percent (7%) shall be made unless the board determines that the avails of the tax levy of three (3) mills, when combined with the avails of the deduction of seven percent (7%), is insufficient to keep the system actuarially sound.

(5) The Board of Trustees of the Public Employees' Retirement System, when any municipality has enacted an enabling ordinance as provided in Sections 21-29-5 and 21-29-101, upon a finding that either the municipal employees' retirement system or the disability and relief fund for firemen and policemen is not funded in an actuarially sound manner which is spread upon the minutes of the board, may by order provide that the revenue or a portion thereof produced by the levy authorized for one system be diverted to fund the less actuarially sound system within the same municipality. No transfer may be made of funds from one municipality to another.

(6) The municipality and the Board of Trustees of the Public Employees' Retirement System may enter into such contracts and agreements as are deemed necessary to implement the provisions of this section, including, but not limited to, contracts and agreements addressing the use, application and investment of proceeds of bonds issued under Section 31-25-21 and earnings thereon and the relative rights and obligations of the municipality and the Public Employees' Retirement System during the period that the bonds are outstanding and thereafter.

SOURCES: Codes, 1942, §§ 3473, 3475; Laws, 1940, ch. 287; Laws, 1958, ch. 524; Laws, 1960, ch. 428, § 1; Laws, 1960, ch. 428, § 2; Laws, 1972, ch. 480, § 1; Laws, 1974, ch. 475, § 1; Laws, 1975, chs. 357; 463; Laws, 1976, ch. 463, § 5; Laws, 1984, ch. 441, § 2; Laws, 1985, ch. 535; Laws, 1985, ch. 536, § 7; Laws, 1986, ch. 509, § 2; Laws, 1987, ch. 511, § 13; Laws, 1994, ch. 548, § 3; Laws, 1997, ch. 506 § 2, eff from and after passage (approved April 4, 1997).

Cross References — Discontinuance or reinstatement of tax supporting fund, see § 21-29-119.

Transfer of funds from disability and relief fund to the Public Employees' Retirement System, see § 21-29-121.

Member requesting refund of his contributions to fund upon cessation of employment, see § 21-29-141.

Employers required to pick up member contributions required by this section for all compensation earned after January 1, 1989, see § 21-29-305.

Transferring firemen's disability and retirement funds from one jurisdiction to another, see § 25-11-137.

JUDICIAL DECISIONS

1. In general.

The imposition of a tax for maintenance of the disability and relief fund provided for by this act [Laws of 1940, ch. 287] is not beyond the legislative power, nor does it constitute class legislation, in view of the fact that the act requires maintenance of a contractual relationship between city and employee and continued availability of the employee. Mayor & Aldermen of Vicksburg v. Crichlow, 196 Miss. 259, 16 So. 2d 749 (1944).

RESEARCH REFERENCES

Am Jur. 60A Am. Jur. 2d, Pensions and Retirement Funds §§ 1169 et seq.

CJS. 62 C.J.S., Municipal Corporations §§ 682-695, 740-757, 759, 760-712.

§ 21-29-118. Tax proceeds transferred to Public Employees' Retirement System.

The Public Employees' Retirement System of Mississippi is hereby authorized to deduct two percent (2%) of all tax levied hereunder and paid into the "disability and relief fund" for firemen and policemen to be transferred to the expense fund of the Public Employees' Retirement System of Mississippi to defray the cost of administering this fund.

SOURCES: Laws, 1987, ch. 511, § 14, eff from and after April 30, 1987.

§ 21-29-119. Discontinuance and reinstatement of tax; actuarial study.

When the amount of funds derived from the tax levied pursuant to Section 21-29-117 is sufficient to care for the requirements and necessities as determined by an actuarial study, the governing authorities of said municipality shall discontinue entirely or reduce the tax rate provided in Section 21-29-117 until such time as financial necessity creates a demand for the reassessment of said tax. It is understood, however, in this connection, that when and if the tax collections as herein provided are discontinued, that said tax shall be reassessed when necessity requires, without the necessity of an election. Each municipality with a disability and relief fund for firemen and policemen shall have prepared an actuarial study of the fund at least every four (4) years and report the findings to the legislature of the State of Mississippi. The first such study shall be filed with the legislature in January, 1980.

SOURCES: Codes, 1942, § 3476; Laws, 1940, ch. 287; Laws, 1976, ch. 463, § 6, eff from and after passage (approved May 22, 1976).

§ 21-29-121. Disability and relief fund constitutes special fund; transfer of moneys to Public Employees' Retirement System.

The disability and relief fund for firemen and policemen shall be a special trust fund and shall be disbursed only in the manner hereafter provided. Such fund shall be a part of the public funds of the Public Employees' Retirement System and shall be kept by the board as it is required to keep its other funds. Interest earned on said fund shall be credited to and become a part of said fund. All moneys on deposit in such funds on July 1, 1987, shall be paid over to the Board of Trustees of Public Employees' Retirement System on or before July 1, 1987.

SOURCES: Codes, 1942, §§ 3473, 3480; Laws, 1940, ch. 287; Laws, 1958, ch. 524; Laws, 1960, ch 428, § 1; Laws, 1987, ch. 511, § 15, eff from and after April 30, 1987.

Cross References — Investment of part of disability and relief fund, see § 21-29-125.

Advancements from general fund to disability and relief fund, see § 21-29-127.

§ 21-29-123. Allowances upon disability and relief fund.

All allowances made upon the disability and relief fund for firemen and policemen shall be drawn against the fund by the board of trustees, and shall be issued only upon compliance with the rules and regulations of the board of trustees, or the board of disability and relief appeals.

SOURCES: Code, 1942, §§ 3477, 3481; Laws, 1940, ch. 287; Laws, 1987, ch. 511, § 16, eff from and after April 30, 1987.

Cross References — Transfer of funds of disability and relief fund to the Public Employees' Retirement System, see § 21-29-121.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

Retirement benefits under this Act [Laws 1940, ch 287] are not gratuities, nor for a private purpose, nor the lending of credit, not are they extra compensation within the prohibitions of the Constitution. Mayor & Aldermen of Vicksburg v. Crichlow, 196 Miss. 259, 16 So. 2d 749 (1944).

Nor does this act [Laws 1940, ch 287] constitute class legislation, or a violation of the constitutional prohibition against maintaining the salary of an officer after his duties have been taken away, or allowing an officer to hold office or employment without personally devoting his time thereto; nor does it run counter to the requirement that no person shall be elected or appointed to office for life or during good behavior and that the term of all offices shall be for some specified period. Mayor & Aldermen of Vicksburg v. Crichlow, 196 Miss. 259, 16 So. 2d 749 (1944).

Judgment in mandamus action to compel cities to comply with statute providing for retirement benefits for firemen and policemen, that petitioner was entitled to the relief prayed for and to a peremptory writ of mandamus and that he have of the defendants the relief prayed for in his petition, was too broad as assuming to decide the merits of the case, constituting a prejudgment of matters within the discretion of the board, created by the act, and as applying to duties imposed upon the city which could not be enforced by mandamus. Mayor & Aldermen of Vicksburg v. Crichlow, 196 Miss. 259, 16 So. 2d 749 (1944).

§ 21-29-125. Investment of part of disability and relief fund.

The authority is vested in the board of trustees to invest such part of said fund as may not be immediately required, in investments authorized under Section 25-11-121 with the right to change said investment from time to time, and with the right and duty to convert invested funds into current funds as the same may be needed for the purpose of this article.

SOURCES: Codes, 1942, § 3480; Laws, 1940, ch. 287; Laws, 1987, ch. 511, § 17, eff from and after April 30, 1987.

Cross References — Transfer of funds of disability and relief fund to the Public Employees' Retirement System, see § 21-29-121.

§ 21-29-127. Advancements from general fund to disability and relief fund.

The governing authority may immediately advance necessary moneys from the general fund to said fund to enable payments to all qualified beneficiaries to be brought into a current status. Any moneys necessarily advanced shall be paid back to the general fund from the surplus of said fund as it is allocated.

SOURCES: Codes, 1942, § 3473; Laws, 1940, ch. 287; Laws, 1958, ch. 524; Laws, 1960, ch. 428, § 1.

Cross References — Transfer of funds of disability and relief fund to the Public Employees' Retirement System, see § 21-29-121.

§ 21-29-129. Who entitled to benefits.

Every member of said fire department and police department including its officers, but not including the governing authorities of said city on account of their relation as such to said fire department and/or police department, who are members of the disability and relief fund for firemen and policemen shall come under the provisions and benefits of this article and shall receive all benefits provided for in this article. All firemen and policemen who are employed in the said fire department or police department after adoption of a resolution by the municipality in accordance with the provisions of subsection (c) of Section 21-29-17 shall not become members of the disability and relief fund for firemen and policemen.

However, in any municipality having a population of not less than twenty-eight thousand (28,000) and not more than thirty thousand (30,000) according to the 1960 decennial census and located in a county having an assessed valuation in 1969 of not less than Eighty-five Million Dollars ($85,000,000.00) and not more than Ninety Million Dollars ($90,000,000.00), any former member of the fire or police department with thirteen (13) or more consecutive and paid years longevity retirement benefits in the retirement system, who remains in public service of such municipality in an elected capacity which includes ex officio chief of police or fire department, such elected public service shall be credited under this article, when the member pays into the system all employer and employee contributions with any interest or earnings thereon based upon the salary he received during the last six (6) months of his employment as a fireman or policeman prior to his becoming an elected official, and his retirement benefits shall be computed upon the salary so received.

SOURCES: Codes, 1942, § 3484; Laws, 1940, ch. 287; Laws, 1971, ch. 379, § 1; Laws, 1976, ch. 463, § 7, eff from and after passage (approved May 22, 1976).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference in the first paragraph. The reference to "Section 27-29-17" was changed to "Section 21-29-17." The Joint Committee ratified the correction at its August 5, 2008, meeting.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

Retirement benefits under this Act [Laws 1940, ch 287] are not gratuities, nor for a private purpose, nor the lending of credit, nor are they extra compensation within the prohibitions of the Constitution. Mayor & Aldermen of Vicksburg v. Crichlow, 196 Miss. 259, 16 So. 2d 749 (1944).

Nor does this act [Laws 1940, ch 287]

constitute class legislation, or a violation of the constitutional prohibition against maintaining the salary of an officer after his duties have been taken away, or allowing an officer to hold office or employment without personally devoting his time thereto; nor does it run counter to the requirement that no person shall be elected or appointed to office for life or during good behavior and that the term of all offices shall be for some specified period. Mayor & Aldermen of Vicksburg v. Crichlow, 196 Miss. 259, 16 So. 2d 749 (1944).

RESEARCH REFERENCES

Am Jur. 6 Am. Jur. 2d, Attachment and Garnishment § 146.

60A Am. Jur. 2d, Pensions and Retirement Funds §§ 1174, 1183, 1252.

63A Am. Jur. 2d, Public Officers and Employees §§ 181, 182.

CJS. 67 C.J.S., Officers and Public Employees §§ 421-432.

§ 21-29-131. Service records to be kept.

The Public Employees' Retirement System shall keep a record of service of the members of said fire department and police department, which record shall show the history of employment of each member of said fire department and police department. Said record shall be entered up fully at the time such city comes within the terms of this article, and it shall thereafter be kept entered up fully and correctly. All records currently maintained by the municipality's affected membership shall be forwarded to the Public Employees' Retirement System not later than July 1, 1987. Any additional changes shall be forwarded to the Public Employees' Retirement System as made.

SOURCES: Codes, 1942, § 3482; Laws, 1940, ch. 287; Laws, 1987, ch. 511, § 18, eff from and after April 30, 1987.

§ 21-29-133. Disability benefits; injury or illness resulting from discharge of duties.

If any member of said fire department or police department shall become or be found to be totally disabled for the discharge of his duties as a member of said fire department or police department, mentally or physically, by reason of sickness or injury caused or sustained by reason of service or discharge of his duty in said department, after such city shall have come within the terms of this article, said disability and relief board shall order the payment and there shall be paid from said fund to said fireman or policeman each month thereafter an amount equal to fifty percent (50%) of said fireman's or policeman's monthly salary, to be paid throughout such total disability for service. In passing upon the question of disability, said board shall require an examination of the applicant by the city physician or other physician or physicians as it may deem proper, and may require like examinations from time to time throughout the period of disability claimed by said fireman or policeman. If said city pays a salary to its firemen or policemen while disabled in an amount equal to the disability relief allowed under this section, said fireman or policeman shall not be entitled to any disability relief under this section.

SOURCES: Codes, 1942, § 3485; Laws, 1940, ch. 287; Laws, 1964, ch. 505, § 1; Laws, 1974, ch. 395 § 1, eff from and after passage (approved March 25, 1974).

Cross References — Requirement of physical and mental examination, see § 21-29-137.

Loss of relief or benefits being received upon attachment to another paid fire or police department, see § 21-29-143.

Death benefits where death results from discharge of duty after retirement, see § 21-29-145.

JUDICIAL DECISIONS

1. In general.

The total disability for which benefits are allowed firemen is related solely to disability to discharge the duties of a member of the fire department. Board of Disability & Relief v. Hudson, 229 Miss. 631, 91 So. 2d 718 (1957).

Where the total disability exists the only restriction upon claimant's rights to benefits is in a case where the city is paying a salary to the claimant while disabled in an amount equal to the disability relief allowed, and in a case where the claimant has attached himself to a paid fire department in another city. Board of Disability & Relief v. Hudson, 229 Miss. 631, 91 So. 2d 718 (1957).

The fact that a fireman obtained other employment which he was able to perform, notwithstanding his admitted total disability to discharge the duties of a fireman, would not deprive the former fireman of his right to the disability benefits provided by statute. Board of Disability & Relief v. Hudson, 229 Miss. 631, 91 So. 2d 718 (1957).

Contention of Board of Disability & Relief that claimant was not a fireman at the time he sought disability payments was not sustained by evidence that claimant remained in the employment of the city as a member of the fire department from the day of his injury, April 17, 1952, to July 1953, and on June 30, 1953, gave notice not of his intention to resign but of his desire to retire and claim retirement benefits, which the board treated as an application for retirement and/or disability benefits and granted disability benefits and paid them until such payments were terminated by a letter of the city attorney more than a year later. Board of Disability & Relief v. Hudson, 229 Miss. 631, 91 So. 2d 718 (1957).

RESEARCH REFERENCES

ALR. Requiring submission to physical examination or test as violation of constitutional rights. 25 A.L.R.2d 1407.

Misconduct as affecting right to pension or retention of position in retirement system. 76 A.L.R.2d 566.

Determination whether firefighter's disability is service-connected for disability pension purposes. 7 A.L.R.4th 799.

Determination whether peace officer's disability is service-connected for disability pension purposes. 12 A.L.R.4th 1158.

Am Jur. 60A Am. Jur. 2d, Pensions and Retirement Funds §§ 1211, 1214, 1228 et seq., 1244 et seq.

63C Am. Jur. 2d, Public Officers and Employees §§ 177, 178.

CJS. 67 C.J.S., Officers and Public Employees §§ 421-432.

§ 21-29-135. Disability benefits; illness or injury resulting from other than discharge of duties.

Should any member of a fire or police department become or be found to be permanently and totally disabled for the discharge of his duties as a member of said fire department or police department, mentally or physically, by reason of sickness or injury, and who has had not less than five years' service with such department, there shall be paid to said fireman or policeman from the firemen's and policemen's disability and relief fund, provided the municipality has such a fund, for each year's active service, not to exceed a period of twenty years, one-fortieth of the monthly salary of such policeman or fireman at the time such disability is incurred, to be paid throughout such permanent and total disability. In passing upon the question of disability said board shall require an examination of the applicant by the city physician or other physician or physicians as it may deem proper, and may require like examinations from time to time throughout the period of disability claimed by said fireman or policeman. If said city pays a salary to its firemen or policemen while disabled in an amount equal to the disability relief allowed under this section, said firemen or policemen shall not be entitled to any disability relief under this section.

SOURCES: Codes, 1942, § 3485.5; Laws, 1964, ch. 504, eff from and after passage (approved May 8, 1964).

Cross References — Requirement of physical and mental examination, see § 21-29-137.

Loss of relief or benefits being received upon attachment to another paid fire or police department, see § 21-29-143.

Refund of contributions, see § 21-29-141.

RESEARCH REFERENCES

Am Jur. 60A Am. Jur. 2d, Pensions and Retirement Funds §§ 1211, 1214, 1228 et seq., 1244 et seq.

63C Am. Jur. 2d, Public Officers and Employees §§ 177, 178.

CJS. 67 C.J.S., Officers and Public Employees §§ 421-432.

§ 21-29-137. Physical and mental examinations.

In all matters involving the disability or sickness of a member of such fire and/or police department, such member shall submit himself to physical and mental examination when and as required by said disability and relief board of said governing authorities. A failure or refusal so to do shall suspend the benefits of Sections 21-29-133 and 21-29-135, until such time as he shall submit himself to such examination.

SOURCES: Codes, 1942, § 3489; Laws, 1940, ch. 287.

RESEARCH REFERENCES

ALR. Requiring submission to physical examination or test as violation of constitutional rights. 25 A.L.R.2d 1407.

§ 21-29-139. Retirement benefits.

If any member of said fire and/or police department who has been in paid fire and/or police department service for as long as twenty (20) years before making application hereinafter mentioned, the last ten (10) years of which shall have been continuous in the city in which the application is made, shall make written application for retirement and relief, the board of disability and relief shall, without medical examination of disability, retire him from active service in said fire and/or police department. Upon such retirement from active service, said board of disability and relief shall order the payment to such retired member monthly from said fund a sum equal to fifty percent (50%) of the average monthly base salary and longevity pay received as salary by such member in the six-month period next before the filing of such application in said fire and/or police department. Such payments shall thereafter be made to said retired member for life, such payment to be known as "retired relief."

Any member of the fire and/or police department who has been in paid fire and/or police department service for longer than twenty (20) years in a municipality shall be entitled and shall receive additional retired relief payment for life in a sum equal to one and seven-tenths percent (1-7⁄10%) of the same average monthly base salary and longevity pay received by such member in the six-month period next preceding the filing of said application, for each full year of service in excess of twenty (20) years' service. However, no retired relief payment to any member shall exceed sixty-six and two-thirds percent (66-2⁄3%) of the average monthly base salary and longevity pay received by a member for the six-month period next preceding the filing of said application.

The said board shall, when a member of the fire and/or police department reaches the age of sixty-five (65), retire him from active service in said fire and/or police department and order the payment of such funds as the member is entitled to hereunder.

Periods of time in which a member may have been inactive on account of physical or mental disability shall not be excluded in computing the twenty-year period and the ten-year period hereinbefore mentioned. Periods of time within which a member may have been absent from his employment while in active service of the Army or Navy of the United States, United States Marine Corps or the United States Coast Guard between September 16, 1940, and July 25, 1947, or while as a civil employee engaged by the Army and Navy while serving outside the continental United States shall not be excluded in computing the twenty-year period and the ten-year period hereinbefore mentioned, provided that the discharge or release of such member from the armed forces was under conditions other than dishonorable. Any member who has been retired or is voluntarily retired hereunder, or who has received relief or disability benefits hereunder, shall be required to perform such duties as then may be required of him.

Provided, however, in any city having a population of nineteen thousand (19,000) but less than twenty thousand (20,000), according to the 1970 census, the periods of time not exceeding four (4) years within which a member of the fire or police departments may have been absent from his employment while in active service in the Armed Forces of the United States, shall not be excluded in computing the twenty-year period and the ten-year period mentioned in this section.

SOURCES: Codes, 1942, § 3486; Laws, 1940, ch. 287; Laws, 1970, ch. 512, § 1; Laws, 1974, ch. 475, § 2; Laws, 1993, ch. 582, § 1, eff from and after passage (approved April 8, 1993).

Editor's Note — Laws of 1993, ch. 582, § 2, effective from and after passage (approved April 8, 1993), provides as follows:

"SECTION 2. The provisions of this act shall be applied retroactively."

Cross References — Refund of contributions, see § 21-29-141.

Loss of relief or benefits being received upon attachment to another paid fire or police department, see § 21-29-143.

Death benefits where death results from discharge of duties after retirement, see § 21-29-145.

Provisions of social security and retirement and disability benefits, see §§ 25-11-3 et seq.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

Section 21-29-139 is unambiguous and its plain meaning allows credit for all time served in the military up to 4 years, regardless of whether served before or after the employment began. City of Natchez v. Sullivan, 612 So. 2d 1087 (Miss. 1992).

2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

Retirement benefits under this Act [Laws 1940, ch 287] are not gratuities, nor for a private purpose, nor the lending of credit, nor are they extra compensation within the prohibitions of the Constitution. Mayor & Aldermen of Vicksburg v. Crichlow, 196 Miss. 259, 16 So. 2d 749 (1944).

Nor does this act [Laws 1940, ch 287] constitute class legislation, or a violation of the constitutional prohibition against maintaining the salary of an officer after his duties have been taken away, or allowing an officer to hold office or employment without personally devoting his time thereto; nor does it run counter to the requirement that no person shall be elected or appointed to office for life or during good behavior and that the term of all offices shall be for some specified period. Mayor & Aldermen of Vicksburg v. Crichlow, 196 Miss. 259, 16 So. 2d 749 (1944).

Judgment in mandamus action to compel cities to comply with statute providing for retirement benefits for firemen and policemen, that petitioner was entitled to the relief prayed for and to a peremptory writ of mandamus and that he have of the defendants the relief prayed for in his petition, was too broad as assuming to decide the merits of the case, constituting a prejudgment of matters within the discretion of the board, created by the act, and as applying to duties imposed upon the city which could not be enforced by mandamus. Mayor & Aldermen of Vicksburg v. Crichlow, 196 Miss. 259, 16 So. 2d 749 (1944).

The imposition of a tax for maintenance of the disability and relief fund provided for by this act is not beyond the legislative power, nor does it constitute class legislation, in view of the fact that the act requires maintenance of a contractual relationship between city and employee and continued availability of the employee. Sartin v. Barlow ex rel. Smith, 196 Miss. 159, 16 So. 2d 372 (1944).

ATTORNEY GENERAL OPINIONS

When a police officer retires and receives retirement benefits under this section and then applies for re-employment as a police officer in a city that offers a retirement benefits program through PERS, the officer is not entitled to receive retirement benefits under the city's disability and relief fund for the period of such re-employment. Brown, January 15, 1999, A.G. Op. #98-0762.

RESEARCH REFERENCES

ALR. Disciplinary suspension of public employee as affecting computation of length of service for retirement or pension purposes. 6 A.L.R.2d 506.

Constitutionality, construction, and application of statute or ordinance providing for reduction of pension or retirement benefit of public officer or employee because of independent income. 7 A.L.R.2d 692.

Misconduct as affecting right to pension or retention of position in retirement system. 76 A.L.R.2d 566.

Am Jur. 60A Am. Jur. 2d, Pensions and Retirement Funds §§ 1192 et seq., 1228 et seq., 1244 et seq.

63C Am. Jur. 2d, Public Officers and Employees §§ 177, 178.

CJS. 62 C.J.S., Municipal Corporations §§ 755, 788.

§ 21-29-141. Refunds.

Any member of the fire and/or police department who ceases to be an employee before becoming eligible to receive either a service or disability allowance, as provided by this article, may file a request in writing with the board of disability and relief for a refund of all sums contributed by him to the fund, which sums shall be paid to him, without interest, within one year of the filing of the request.

SOURCES: Codes, 1942, § 3486; Laws, 1940, ch. 287; Laws, 1970, ch. 512, § 1, eff from and after January 1, 1971.

Cross References — Loss of benefits in case of transfer, see § 21-29-143.

Provisions of social security and state retirement and disability benefits, see §§ 25-11-3 et seq.

§ 21-29-143. Loss of benefits in case of transfer.

Any person receiving relief or benefits under the provisions of this article shall not be entitled to said benefits should such person attach himself to a paid fire department or police department in another city having a paid retirement benefit program for firemen or policemen.

SOURCES: Codes, 1942, § 3486; Laws, 1940, ch. 287; Laws, 1970, ch. 512, § 1, eff from and after January 1, 1971.

Cross References — Refund of contributions, see § 21-29-141.

Provisions of social security and retirement and disability benefits, see §§ 25-11-3 et seq.

JUDICIAL DECISIONS

1. In general.

The imposition of a tax for maintenance of the disability and relief fund provided for by this act [Laws of 1940, ch. 287] is not beyond the legislative power, nor does it constitute class legislation, in view of the fact that the act requires maintenance of a contractual relationship between city and employee and continued availability of the employee. Mayor & Aldermen of Vicksburg v. Crichlow, 196 Miss. 259, 16 So. 2d 749 (1944).

ATTORNEY GENERAL OPINIONS

A fire chief may not receive a retirement benefit from the Firemen's and Policemen's Disability and Relief Fund while employed as the chief in the same department from which he retired with a city. In addition, at the time he was reemployed with the city membership in the Public Employees' Retirement System was and continues to be mandatory. Wallace, Oct. 10, 2003, A.G. Op. 03-0552.

RESEARCH REFERENCES

Am Jur. 60A Am. Jur. 2d, Pensions and Retirement Funds § 1226.

63C Am. Jur. 2d, Public Officers and Employees §§ 177, 178.

CJS. 67 C.J.S., Officers and Public Employees §§ 421-432.

§ 21-29-145. Death benefits where death results from discharge of duty or after retirement.

[For any municipality that has not elected to authorize the continuation of or reinstatement of spouse retirement benefits under the provisions of Section 21-29-329, this section shall read as follows:]

(1) If any member of the fire or police department dies in active service, or dies in inactive service on account of disability approved for disability relief under the provisions of Section 21-29-133, as a result of injury received while in the discharge of duty in the service of the fire department or police department, or dies as a result of sickness or disease, due to the discharge of duty while in service as a member of the fire or police department, or if the member dies while entitled to relief after retirement under Section 21-29-

139, the amount of disability relief or retirement being paid, or which should have been properly paid, shall continue to be paid from the fund to the spouse of the deceased member for the use of the spouse and the child or children of the deceased member, so long as the spouse remains unmarried. If, after the marriage of the spouse, there remains a child or children of the deceased member, the payments shall continue to be made to a parent or lawful custodian of the child or children without the necessity of appointment as guardian for the benefit of the child or children. After the death or marriage of the spouse, all payments to the spouse shall cease, and after the death of any child or children of the deceased member, all payments to the child or children shall cease. If the deceased member is not survived by spouse or child or children, but is survived by a father, mother, or an unmarried sister dependent upon him or her, the payments shall continue to be made to the dependent father or mother or both, so long as each lives, or if there is no dependent father or mother surviving the deceased member, the payments shall continue to be made to the unmarried dependent sister or dependent sisters of the deceased, so long as the beneficiary or beneficiaries remain unmarried. Upon the death or marriage of any such sister, all payments shall cease to her. Payments to dependents under this section are for services rendered by the members of the fire and/or police department, and the amount of payment is within the discretion of the board of disability and relief, but in no event shall the amount payable under this section be in excess of the amount that would have been payable as disability and relief to a member of the department. If the father, mother, or sisters are not wholly dependent, then they shall not receive any amount in excess of the difference between the income of the father, mother, sister or sisters, and the amount that the deceased member would have been entitled to.

(2) For purposes of this section:

(a) "Dependent" means wholly dependent upon the deceased at the time of his death.

(b) "Child" or "children" means:

(i) Children of the deceased member under the age of eighteen (18);

(ii) Children of the deceased member eighteen (18) years of age or older who have not yet reached their twenty-third birthday and are pursuing a full-time education; or

(iii) Children of the deceased member who, though eighteen (18) years of age or older, are wholly dependent upon the deceased member and incapable of self-support by reason of mental or physical disability.

[For any municipality that has elected to authorize the continuation of or reinstatement of spouse retirement benefits under the provisions of Section 21-29-329, this section shall read as follows:]

(1) If any member of the fire or police department dies in active service, or dies in inactive service on account of disability approved for disability relief under the provisions of Section 21-29-133, as a result of injury received while in the discharge of duty in the service of the fire department or police

department, or dies as a result of sickness or disease, due to the discharge of duty while in service as a member of the fire or police department, or if the member dies while entitled to relief after retirement under Section 21-29-139, the amount of disability relief or retirement being paid, or which should have been properly paid, shall continue to be paid from the fund to the spouse of the deceased member for life for the use of the spouse and the child or children of the deceased member. If the deceased member is not survived by a spouse, but there remains a child or children of the deceased member, the payments shall continue to be made to a parent or lawful custodian of the child or children without the necessity of appointment as guardian for the benefit of the child or children. After the death of the spouse, all payments to the spouse shall cease, and after the death of any child or children of the deceased member, all payments to the child or children shall cease. If the deceased member is not survived by spouse or child or children, but is survived by a father, mother or an unmarried sister dependent upon him or her, the payments shall continue to be made to the dependent father or mother or both, so long as each lives. If there is no dependent father or mother surviving the deceased member, the payments shall continue to be made to the unmarried dependent sister or sisters of the deceased member, so long as the beneficiary or beneficiaries remain unmarried. Upon the death or marriage of any such sister, all payments shall cease to her. Payments to dependents under this section are for services rendered by the members of the fire and/or police department, and the amount of payment is within the discretion of the board of disability and relief, but in no event shall the amount payable under this section be in excess of the amount that would have been payable as disability and relief to a member of the department. If the father, mother or sisters are not wholly dependent, then they shall not receive any amount in excess of the difference between the income of the father, mother, sister or sisters, and the amount that the deceased member would have been entitled to.

(2) For the purposes of this section:

(a) "Dependent" means wholly dependent upon the deceased member at the time of his or her death.

(b) "Child" or "children" means:

(i) Children of the deceased member under the age of eighteen (18);

(ii) Children of the deceased member who are eighteen (18) years of age or older who have not yet reached their twenty-third birthday and are pursuing a full-time education; or

(iii) Children of the deceased member who, though eighteen (18) years of age or older, are wholly dependent upon the deceased member and incapable of self-support by reason of mental or physical disability.

SOURCES: Codes, 1942, § 3487; Laws, 1940, ch. 287; Laws, 1974, ch. 437, § 1; Laws, 1978, ch. 435, § 1; Laws, 1980, ch. 358, § 2; Laws, 2004, ch. 561, § 11, eff from and after July 1, 2004.

RESEARCH REFERENCES

ALR. Variations in retirement, pension, or death benefit plans as unlawful employment practice under 42 USCS § 2000e-2(a). 35 A.L.R. Fed. 15.

Am Jur. 60A Am. Jur. 2d, Pensions and Retirement Funds §§ 1197 et seq., 1222, 1244 et seq.

63C Am. Jur. 2d, Public Officers and Employees §§ 177, 178.

CJS. 62 C.J.S., Municipal Corporations §§ 755, 788.

§ 21-29-147. Death benefits where death results from other causes.

[For any municipality that has not elected to authorize the continuation of or reinstatement of spouse retirement benefits under the provisions of Section 21-29-329, this section shall read as follows:]

(1) If any member of a fire or police department dies while a member of the fire or police department, and has had not less than five (5) years' service with the department, there shall be paid from the firemen's and policemen's disability and relief fund benefits as follows:

(a) For each year's active service, not to exceed a period of twenty (20) years, one-fortieth (1/40) of the average monthly salary or compensation received by the member in the six-month period next preceding his or her death; and

(b) For each full year of active service in excess of twenty (20) years service, an additional payment in a sum equal to one and seven-tenths percent (1-7/10%) of the same average monthly base salary and longevity pay received by the member in the six-month period next preceding his or her death (provided that no such payment shall exceed sixty-six and two-thirds percent (66-2/3%) of the average monthly base salary and longevity pay received by a member for the six-month period next preceding his or her death) to the spouse of the deceased member for the use of the spouse and the child or children of the deceased member under the age of eighteen (18) years, so long as he or she remains unmarried, and if, after the marriage of the spouse, there remains a child or children of the deceased member still under the age of eighteen (18) years, the payments shall continue to be made to a parent or lawful custodian of the child or children without the necessity of appointment as guardian for the benefit of the child or children, so long as the child or children are under the age of eighteen (18) years. After the death or marriage of the spouse , all payments to the spouse shall cease, and after the death or attainment of the age of eighteen (18) years of any child or children of the deceased member, all payments to the child or children over eighteen (18) years of age shall cease. If the deceased member is not survived by spouse or child or children under the age of eighteen (18) years, but is survived by a father, mother or an unmarried sister dependent upon him or her, the payments shall continue to be made to the dependent father or mother or both, so long as each lives. If there is no dependent father or mother surviving the deceased member, the payments shall continue to be made to the dependent sister or sisters of the deceased member, or dependent incurable children of the deceased member, so long as the beneficiary or beneficiaries remain unmarried. Upon the death or marriage of any such sisters, all payments shall cease to her. The word "dependent" as used in this section shall mean "wholly dependent."

(2) It is the intention of the Legislature that the benefits authorized by paragraph (b) of subsection (1) of this section, shall be paid to all qualified and eligible spouses whose deceased spouses died before March 27, 1978.

[For any municipality that has elected to authorize the continuation of or reinstatement of spouse retirement benefits under the provisions of Section 21-29-329, this section shall read as follows:]

(1) If any member of a fire or police department dies while a member of the fire or police department, and who has had not less than five (5) years' service with the department, there shall be paid from the firemen's and policemen's disability and relief fund benefits as follows:

(a) For each year's active service, not to exceed a period of twenty (20) years, one-fortieth (1⁄40) of the average monthly salary or compensation received by the member in the six-month period next preceding his or her death; and

(b) For each full year of active service in excess of twenty (20) years service, an additional payment in a sum equal to one and seven-tenths percent (1-7⁄10%) of the same average monthly base salary and longevity pay received by the member in the six-month period next preceding his or her death (provided that no such payment shall exceed sixty-six and two-thirds percent (66-2⁄3%) of the average monthly base salary and longevity pay received by a member for the six-month period next preceding his or her death) to the spouse of the deceased member for life for the use of the spouse and the child or children of the deceased member under the age of eighteen (18) years. If the deceased member is not survived by a spouse, but there remains a child or children of the deceased member still under the age of eighteen (18) years, the payments shall be made to a parent or lawful custodian of the child or children without the necessity of appointment as guardian for the benefit of the child or children, so long as the child or children are under the age of eighteen (18) years. After the death of the spouse, all payments to the spouse shall cease, and after the death or attainment of the age of eighteen (18) years of any child or children of the deceased member, all payments to the child or children over eighteen (18) years of age shall cease. If the deceased member is not survived by spouse or child or children under the age of eighteen (18) years, but is survived by a father, mother or an unmarried sister dependent upon him or her, the payments shall continue to be made to the dependent father or mother or both, so long as each lives. If there is no dependent father or mother surviving the deceased member, the payments shall continue to be made to the dependent sister or sisters of the deceased member, or dependent incurable children of the deceased member, so long as the beneficiary or beneficiaries remain unmarried. Upon the death or marriage of any such sisters, all payments shall cease to her. The word "dependent" as used in this section shall mean "wholly dependent."

(2) It is the intention of the Legislature that the benefits authorized by paragraph (b) of subsection (1) of this section shall be paid to all qualified and eligible spouses whose deceased spouses died before March 27, 1978.

SOURCES: Codes, 1942, § 3487.5; Laws, 1962, ch. 546; Laws, 1978, ch. 435, § 2; Laws, 2004, ch. 561, § 12, eff from and after July 1, 2004.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in paragraph (b). The word "percent" was inserted after "seven-tenths." The Joint Committee ratified the correction at its December 3, 1996 meeting.

Cross References — Additional provisions governing death benefits, see § 21-29-255.

RESEARCH REFERENCES

Am Jur. 60A Am. Jur. 2d, Pensions and Retirement Funds §§ 1197 et seq., 1222, 1244 et seq.

63C Am. Jur. 2d, Public Officers and Employees §§ 177, 178.

CJS. 67 C.J.S., Officers and Public Employees §§ 421-432.

§ 21-29-149. Suit shall not be filed in cases of insufficient funds.

Should said fund at any time be insufficient to make all payments properly payable therefrom, the beneficiaries shall not file any suit against said city, its governing authorities, or said disability and relief board, but the amounts available shall be properly prorated until such time as funds may be sufficient to make all payments payable thereafter for the full amount properly allowed.

SOURCES: Codes, 1942, § 3488; Laws, 1940, ch. 287.

§ 21-29-151. Application.

This article shall apply to municipalities whether under private charter or existing and operating under the general statutes of the State of Mississippi.

This article is supplementary to any laws heretofore passed and the provisions of this article are not applicable to any municipality operating under Article 5 of this chapter. It is the intention of the legislature to make it mandatory on municipalities to enforce the provisions of this article, unless a majority of those voting in an election thereon vote otherwise.

SOURCES: Codes, 1942, §§ 3490, 3494; Laws, 1940, ch. 287.

Cross References — Applicability of "code charters" provisions, see § 21-7-3.

Disability and Relief Fund for Firemen and Policemen Under Laws 1930, Chapter 55, see §§ 21-29-201 et seq.

ARTICLE 5.

DISABILITY AND RELIEF FUND FOR FIREMEN AND POLICEMEN UNDER LAWS 1930, CHAPTER 55.

SEC.

21-29-201. Creation of disability and relief fund and system for firemen and policemen.
21-29-203. Election as to inauguration of disability and relief fund and system.
21-29-205. Election as to continuation of disability and relief system and fund; effect thereof; discontinuance of new memberships.
21-29-207. Organization of board of disability and relief; advisory board; compensation.
21-29-209. Powers and duties of the board of disability and relief.
21-29-211 through 21-29-213. Repealed.
21-29-215. Creation of board of disability and relief appeals.
21-29-217. Appeals.
21-29-219. Funding; ad valorem tax, or use of other funds, contributions, and salary deductions.
21-29-220. Tax proceeds transferred to Public Employees' Retirement System.
21-29-221. Discontinuance and reinstatement of ad valorem tax; actuarial study.
21-29-223. Disability and relief fund constitutes special fund; transfer of moneys to Public Employees' Retirement System.
21-29-225. Allowances upon disability and relief fund.
21-29-227. Investment of part of disability and relief fund.
21-29-229. Tax on premiums of fire and lightning insurers.
21-29-231. On what premiums tax may be imposed; tax not to be used as an element of premium.
21-29-233. Duty of state tax commission.
21-29-235. Failure of insurance company to report.
21-29-237. Persons entitled to benefits.
21-29-239. Service records to be kept.
21-29-241. Disability relief.
21-29-243. Physical and mental examination.
21-29-245. Retirement benefits.
21-29-247. Cost-of-living increases.
21-29-249. Refunds.
21-29-251. Alternative program; retirement benefits.
21-29-253. Alternative program; refunds.
21-29-255. Death benefits.
21-29-257. Exemption from process.
21-29-259. Suit shall not be filed in cases of insufficient fund.
21-29-261. Application of article.

§ 21-29-201. Creation of disability and relief fund and system for firemen and policemen.

In each city in the State of Mississippi having a population of not less than three thousand (3,000) according to the last federal census or according to any subsequent federal census, and having a regularly organized, paid fire department with equipment of the value of not less than Four Thousand Dollars ($4,000.00) and/or regularly organized paid police department, and having not less than two (2) paid firemen and/or not less than two (2) paid policemen, whose sole employment is by such city in its fire department and for police department, there may be provided in connection with the regularly organized and maintained paid fire department and/or police department of such city a special fund known as the "disability and relief fund for firemen and policemen," hereinafter called "said fund," which shall exist and be maintained for the benefit of the persons hereinafter named and shall be derived, raised and administered in the manner hereinafter provided.

Said fund and system of relief, when inaugurated, shall and does create a disability and relief system to apply to the members of the regularly organized, maintained and paid fire department and/or police department of such municipality. Notwithstanding any other section of this article no such fund known as the "disability and relief fund for firemen and policemen" shall be created by any city after March 1, 1976, unless by an amendment to this article by the legislature of the State of Mississippi.

Any reference in other sections of this article to members of the fire and police department shall be defined to include only the members of the disability and relief fund for firemen and policemen of the city.

SOURCES: Codes, 1942, §§ 3494-01, 3494-04; Laws, 1924, ch. 189; Laws, 1930, ch. 55, §§ 1, 3; Laws, 1976, ch. 463, § 8, eff from and after passage (approved May 22, 1976).

Cross References — Provisions as to disability and relief fund for firemen and policemen to continue unaffected, see § 21-8-39.

Medical and hospital care for injured policemen and firemen, see §§ 21-21-9, 21-25-9, respectively.

Creation of disability and relief fund in municipalities having population of 10,000 or more, see §§ 21-29-101 et seq.

Transfer of disability and relief fund to Public Employees' Retirement System, see § 21-29-223.

Qualifying for, and computation of, disability relief, see § 21-29-241.

Eligibility for, and computation of, retirement benefits, see § 21-29-245.

Benefits payable upon death of member, see § 21-29-255.

Exemption from process of payments to members under fund, see § 21-29-257.

Required military service not affecting various rights of policemen and firemen, see § 21-29-301.

Employers to pick up member contributions to employees' retirement and disability systems, see § 21-29-305.

Schedule for computation of membership service or prior service, see § 21-29-313.

Repayment of refund after reemployment following retirement for purpose of reestablishing contributing membership, see § 21-29-315.

Maximum annual retirement allowance, see § 21-29-317.

Employment-related fringe benefits, see § 21-29-319.

Board of Trustees of Public Employees' Retirement System assessment of interest on delinquent payments from municipalities whose retirement funds it administers, see § 21-29-327.

Municipalities may adopt resolutions allowing spouses receiving retirement benefits to continue to receive spouse benefits for life, even after remarriage, see § 21-29-329.

Benefits accrued or accruing under the provisions of this article exempt from all taxes, attachment or other process, and unassignable, see § 21-29-307.

Transferring law enforcement officers' disability and retirement funds from one jurisdiction to another, see § 25-11-137.

RESEARCH REFERENCES

ALR. Disciplinary suspension of public employee as affecting computation of length of service for retirement or pension purposes. 6 A.L.R.2d 506.

Constitutionality, construction, and application of statute or ordinance providing for reduction of pension or retirement benefit of public officer or employee because of independent income. 7 A.L.R.2d 692.

Validity of legislation providing for additional retirement or disability allowances for public employees previously retired or disabled. 27 A.L.R.2d 1442.

Vested right of pensioner to pension. 52 A.L.R.2d 437.

Acceptance of, or assertion of right to, pension or retirement as abandonment of public office or employment. 76 A.L.R.2d 1312.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 108, 116, 117, 134, 135.

60A Am. Jur. 2d, Pensions and Retirement Funds §§ 1166, 1182.

63A Am. Jur. 2d, Public Officers and Employees §§ 181, 182.

19 Am. Jur. Pl & Pr Forms (Rev), Pensions and Retirement Funds, Forms 1-5 (complaint, petition, or declaration for judicial declaration as to pension rights).

19 Am. Jur. Pl & Pr Forms (Rev), Pensions and Retirement Funds, Form 16 (order directing payment of pension and adoption of resolution to that end).

19 Am. Jur. Pl & Pr Forms (Rev), Pensions and Retirement Funds, Form 17 (motion for summary judgment dismissing claim for pension).

19 Am. Jur. Pl & Pr Forms (Rev), Pensions and Retirement Funds, Forms 6-8 (complaint, petition, or declaration for mandamus to compel payment of pension benefits).

CJS. 67 C.J.S., Officers and Public Employees §§ 421-432.

§ 21-29-203. Election as to inauguration of disability and relief fund and system.

Said fund and system of relief to the fire department and/or police department shall be inaugurated in each municipality only in the following manner: each municipality desiring to create said fund and inaugurate this system of disability and relief for its firemen and/or policemen, shall call an election after giving three weeks consecutive notice in a newspaper published in said city, stating the date, purpose and time of holding said election for the electors to determine whether or not said municipality shall adopt the "disability and relief fund for firemen and policemen." At said election the ballots used by the qualified electors shall read: "For the Disability and Relief Fund for Firemen and Policemen," "Against the Disability and Relief Fund for Firemen and Policemen." Said election shall be held as such other elections of like nature, and if at said election the majority of qualified electors voting thereat, shall vote against the creation of said fund and system, then the said fund and system shall not be created and said fund and system shall not be inaugurated in said municipality. Should a majority of said qualified electors voting at said election vote in favor of the creation of said fund and the operation of said system, the said fund and system shall be inaugurated by said municipality.

SOURCES: Codes, 1942, § 3494-02; Laws, 1924, ch. 189; Laws, 1930, ch. 55, § 1(a).

Cross References — Voting to determine continuation of system, see § 21-29-205.
Source of funding for fund, see §§ 21-29-219, 21-29-221.
Transfer of disability and relief fund to Public Employees' Retirement System, see § 21-29-223.

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

§ 21-29-205. Election as to continuation of disability and relief system and fund; effect thereof; discontinuance of new memberships.

Whenever the said fund shall be created, and a system of disability and relief for firemen and/or policemen inaugurated in any municipality, at any time upon the petition of not less than twenty percent (20%) of the qualified electors of said municipality addressed to the said officers composing the governing board of said municipality, requesting an election to determine whether said municipality shall continue to operate under the provisions of this article, the said governing board of said municipality shall order an election to determine said question. Notice of the election shall be given and conduct of the election shall be had as is provided in Section 21-29-203. If at said election a majority of the qualified electors of said municipality shall vote against the continuance of operation of said municipality under the provisions of this article, the said governing board of said municipality shall at the next regular meeting thereof held after said election order the abolition and discontinuance of said system. The said fund and the said system, however, shall continue as to members of the paid fire department and/or police department of said municipality already in service and entitled to participation in said fund. The said system shall be worked out in said municipality to its end as to said members of the paid fire department and/or police department, but no new members entering the service of the fire and/or police department of said municipality shall be taken into or embraced within said system. If at said election a majority of the qualified electors of said municipality shall not vote for a discontinuance of said system in said municipality, no other election in said regard shall be held therein within a period of one (1) year thereafter. No new members may be joined by the fund after July 1, 1987, and all new employees of the police department and/or fire department of any municipality having such funds shall become members of the Public Employees' Retirement System of Mississippi after July 1, 1987.

SOURCES: Codes, 1942, § 3494-26; Laws, 1924, ch. 189; Laws, 1930, ch. 55, § 24; Laws, 1987, ch. 511, § 19, eff from and after April 30, 1987.

§ 21-29-207. Organization of board of disability and relief; advisory board; compensation.

The Board of Trustees of the Public Employees' Retirement System of Mississippi shall organize itself into a body to be known as the "Board of Disability and Relief of the City of ________."

In each municipality there shall be a board to serve in an advisory capacity to the Board of Trustees of the Public Employees' Retirement System with respect to matters concerning the disability and relief fund. Such board shall consist of five (5) members as follows: two (2) shall be elected by the membership of the police department, two (2) shall be elected by the membership of the fire department and the mayor or his designee shall be an ex officio member. Retired members of the police department and fire department may participate in elections to choose members of the board, and such retired members are also eligible to serve on the board. The term of elected members shall be for four (4) years, and any vacancy in the elected membership shall be filled in the same manner as the original membership was selected.

The members of the board shall receive no compensation or pay from the disability and relief fund for firemen and policemen for the discharge of their duties, except as otherwise provided by law.

SOURCES: Codes, 1942, §§ 3494-10, 3494-25; Laws, 1924, ch. 189; Laws, 1930, ch. 55, §§ 8, 23; Laws, 1966, ch. 594, § 2; Laws, 1985, ch. 356, § 2; Laws, 1987, ch. 511, § 20; Laws, 1994, ch. 404 § 1, eff from and after passage (approved March 15, 1994).

Cross References — Powers of board, see § 21-29-209.

§ 21-29-209. Powers and duties of the board of disability and relief.

The board shall fix a time for regular meetings in its minutes and it shall keep minutes of its meetings, which shall be public records. Special meetings may be held upon the call of the chairman of the board or any two (2) members thereof, upon twenty-four (24) hours' written notice, stating the purpose of the meeting, or at any time when all members are present.

The board shall have the duty and power to promptly hear and pass upon all applications of firemen and/or policemen or of beneficiaries of deceased firemen and of deceased policemen for participation in the benefits of said fund. Said board may hear witnesses, administer oaths, find facts, and make decisions in all matters properly before said board, which decisions shall be final except upon appeals in the way hereafter set forth. Said board shall order payments made according to the facts found and the provisions of this article, which payments shall be made as far as funds may be available. The board may invest the funds as provided in Section 25-11-121, and such funds may be commingled with other system funds for the most advantageous investments; however, each fund shall have separate accounting status.

SOURCES: Codes, 1942, § 3494-10; Laws, 1924, ch. 189; Laws, 1930, ch. 55, § 8; Laws, 1966, ch. 594, § 2; Laws, 1987, ch. 511, § 21, eff from and after April 30, 1987.

Cross References — Organization of board, see § 21-29-207.

Authority to refund contributions to estate of deceased, and to extend benefits to dependent children through age 23, see § 21-29-311.

§§ 21-29-211 through 21-29-213. Repealed.

Repealed by Laws, 1987, ch. 511, § 35, eff from and after April 30, 1987.

21-29-211. [Codes, 1942, § 3494-20; Laws, 1924, ch. 189; 1930, ch. 55, § 18.]

21-29-213. [Codes, 1942, § 3494-14; Laws, 1924, ch. 189; 1930, ch. 55, § 12.]

Editor's Note — Former § 21-29-211 directed the city to furnish the board of disability and relief with facilities and necessary supplies.

Former § 21-29-213 provided that the city attorney would advise and represent the board of disability and relief.

§ 21-29-215. Creation of board of disability and relief appeals.

The commissioner of insurance, the attorney general, and the secretary of state of the State of Mississippi, shall be and are constituted a body to be known as the "board of disability and relief appeals," with full duty and power to hear, consider and determine all matters brought before it on appeal from decisions of the boards of disability and relief. Determinations by said appeal board shall be final.

SOURCES: Codes, 1942, § 3494-11; Laws, 1924, ch. 189; Laws, 1930, ch. 55, § 9.

Cross References — Appeals of decisions or orders of board, see § 21-29-217.

RESEARCH REFERENCES

Am Jur. 60A Am. Jur. 2d, Pensions and Retirement Funds §§ 1253-1255.

63C Am. Jur. 2d, Public Officers and Employees §§ 177, 178.

CJS. 67 C.J.S., Officers and Public Employees §§ 421-432.

§ 21-29-217. Appeals.

Any applicant for benefits of the disability and relief fund for firemen and policemen, or any two (2) active members of said fire department, or any two (2) active members of said police department, being aggrieved at the decision or order of the board of trustees, may file with the board of trustees and with said board of disability and relief appeals duplicate copies of a petition for a rehearing of the matter in which such decision or order was made. Within thirty (30) days thereafter the board of trustees shall file with said appeal board, true copies of all papers and documents which were before it, all evidence of record before it and a statement of all evidence heard by it and not of record, all certified to be true and correct, whereupon said appeal board shall fix a time for hearing and shall give the board of trustees and the petitioner or petitioners for appeal notice of said such time for hearing. When the matter shall come on for hearing said appeal board shall have before it all papers, statements, matters and things certified to it by the board of trustees, as well as such additional evidence and documents as it may hear and receive and upon all of the same shall hear, consider and decide said matter fully and finally according to this article and the facts. Said appeal board may cause witnesses to be sworn by any one (1) of its members, or by any other authority competent to administer oaths. Said appeal board may meet for all purposes at any time in the State of Mississippi when all are present, or upon the call of two (2) members thereof. Said appeal board shall certify its decision to the board of trustees, and such decision or order shall be final and binding and said fund shall be disbursed according thereto. Any suit or other action affecting said fund shall be by or against the board of trustees as custodian of said fund and shall be filed in the Chancery Court of Hinds County.

SOURCES: Codes, 1942, § 3494-11; Laws, 1924, ch. 189; Laws, 1930, ch. 55, § 9; Laws, 1987, ch. 511, § 22, eff from and after April 30, 1987.

Cross References — Creation of board of disability and relief, see § 21-29-215.

RESEARCH REFERENCES

Am Jur. 60A Am. Jur. 2d, Pensions and Retirement Funds §§ 1253-1255.

63C Am. Jur. 2d, Public Officers and Employees §§ 177, 178.

CJS. 67 C.J.S., Officers and Public Employees §§ 421-432.

§ 21-29-219. Funding; ad valorem tax, or use of other funds, contributions, and salary deductions.

(1) The Disability and Relief Fund for Firemen and Policemen shall be created and, except as otherwise provided in subsection (2) of this section, maintained by an ad valorem tax levied annually on all property in the municipality, provided the election called for in Section 21-29-203 has authorized the creation of the fund. The levy made, and the deductions from the salaries of members, shall be in an amount sufficient, but not more than the amount necessary, to make the system actuarially sound by July 1, 2000, as certified to the municipality by the board. Such tax shall not be included in the ten percent (10%) limitation on increases under Section 27-39-321, nor shall any tax increase exceed one-half (½) mill per year; however, if any levy to pay debt service on bonds issued under Section 31-25-20 as described in subsection (2) of this section is reduced for any year as a result of payment of the bonds

or otherwise, the levy under this subsection (1) for such year may be increased by an amount, in addition to the one-half (½) mill otherwise authorized, not to exceed the reduction for such year in the millage levied to pay debt service on the bonds.

(2) In addition to, or in lieu of, the method of funding provided for in subsection (1) of this section, the municipality may fund or assist in funding the retirement system through the use of revenue bonds issued pursuant to Section 31-25-20. Any tax levied to service the debt on such bonds shall not be included in the ten percent (10%) limitation on increases under Section 27-39-321.

(3) The fund may be created and maintained by such gifts, donations and bequests as may be made to the fund by any person or corporation, by any appropriation or tax levy, or both, of the municipality, by such sum or sums as the municipality may receive from insurance companies for the benefit of the fund, and by the deduction by the municipality from the salary of each member of the Disability and Relief Fund for Firemen and Policemen of not less than seven percent (7%) nor more than ten percent (10%) of the amount thereof. Any increase to an amount in excess of seven percent (7%) shall be in increments of not more than one percent (1%) per annum. No increase from the deduction of seven percent (7%) shall be made unless the board determines that the avails of the tax levy of three (3) mills, when combined with the avails of the deduction of seven percent (7%), is insufficient to keep the system actuarially sound.

(4) The municipality and the Board of Trustees of the Public Employees' Retirement System may enter into such contracts and agreements as are deemed necessary to implement the provisions of this section, including, but not limited to, contracts and agreements addressing the use, application and investment of proceeds of bonds issued under Section 31-25-20 and earnings thereon and the relative rights and obligations of the municipality and the Public Employees' Retirement System during the period that the bonds are outstanding and thereafter.

SOURCES: Codes, 1942, §§ 3494-02, 3494-05, 3494-06; Laws, 1924, ch. 189; Laws, 1930, ch. 55, §§ 1(a), 4, 5; Laws, 1960, ch. 429; Laws, 1966, ch. 594, § 1; Laws, 1972, ch. 363, § 1; Laws, 1973, ch. 444, § 1; Laws, 1975, ch. 408; Laws, 1976, ch. 463, § 9; Laws, 1985, ch. 536, § 8; Laws, 1986, ch. 509, § 3; Laws, 1987, ch. 511, § 23; Laws, 1994, ch. 548, § 4; Laws, 1997, ch. 506, § 3, eff from and after passage (approved April 4, 1997).

Cross References — Discontinuance and reinstatement of ad valorem tax, see § 21-29-221.

Transfer of disability and relief fund to Public Employees' Retirement System, see § 21-29-223.

Member requesting refund upon cessation of employment as fireman or policeman, see § 21-29-249.

Employers required to pick up member contributions required by this section for all compensation earned after January 1, 1989, see § 21-29-305.

RESEARCH REFERENCES

Am Jur. 60A Am. Jur. 2d, Pensions and Retirement Funds §§ 1169 et seq.

CJS. 62 C.J.S., Municipal Corporations §§ 682-695, 740-757, 759, 760-762.

§ 21-29-220. Tax proceeds transferred to Public Employees' Retirement System.

The Public Employees' Retirement System of Mississippi is hereby authorized to deduct two percent (2%) of all tax levied hereunder and paid into the "disability and relief fund" for firemen and policemen to be transferred to the expense fund of the Public Employees' Retirement System of Mississippi to defray the cost of administering this fund.

SOURCES: Laws, 1987, ch. 511, § 24, eff from and after April 30, 1987.

§ 21-29-221. Discontinuance and reinstatement of ad valorem tax; actuarial study.

The ad valorem tax provided for in Section 21-29-219 shall be stopped by the municipality whenever the interest from the relief fund shall be sufficient to pay all disabilities and relief which are a charge against said fund and future requirements as determined by the Board of Trustees of the Public Employees' Retirement System of Mississippi. However, when the board of trustees determines that interest from said fund is insufficient to meet the charges of disability or relief, then said municipality shall reinstate said tax for the purpose of building up the relief fund until such time as the fund is actuarially sound, as determined by the Board of Trustees.

The board of trustees, for each municipality with a disability and relief fund for firemen and policemen, shall have prepared an actuarial study of the fund at least every four (4) years and report the findings to the Legislature of the State of Mississippi. The first study shall be filed with the Legislature in January 1980.

SOURCES: Codes, 1942, § 3494-02; Laws, 1924, ch. 189; Laws, 1930, ch. 55, § 1(a); Laws, 1976, ch. 463, § 10; Laws, 1987, ch. 511, § 25, eff from and after April 30, 1987.

Cross References — Ad valorem tax to fund disability and relief fund, see § 21-29-219.

Transfer of disability and relief fund to Public Employees' Retirement System, see § 21-29-223.

§ 21-29-223. Disability and relief fund constitutes special fund; transfer of moneys to Public Employees' Retirement System.

The disability and relief fund for firemen and policemen shall be set aside as a special trust fund and shall only be disbursed in the manner hereafter provided. Such fund shall be a part of the public funds of the Public Employees' Retirement System and shall be kept by the board as it is required to keep its other funds. Interest earned on said fund shall be credited to and become a part of said fund. All moneys on deposit in such funds on July 1, 1987, shall be paid over to the Board of Trustees of the Public Employees' Retirement System of Mississippi on or before July 1, 1987.

SOURCES: Codes, 1942, §§ 3494-03, 3494-12; Laws, 1924, ch. 189; Laws, 1930, ch 55, §§ 2, 10; Laws, 1966, ch. 594, § 3; Laws, 1987, ch. 511, § 26, eff from and after April 30, 1987.

Cross References — Allowances upon fund, see § 21-29-225.
Investment of part of fund, see § 21-29-227.

§ 21-29-225. Allowances upon disability and relief fund.

All allowances made upon the disability and relief fund for firemen and policemen shall be drawn against the fund by the board of trustees, and shall be issued only upon compliance with the rules and regulations of the board of trustees, or the board of disability and relief appeals.

Said fund or its increase, or the interest or dividends therefrom, shall be paid out by the Public Employees' Retirement System herein authorized.

Necessary and proper payments may be made from said fund if it be deemed necessary by the board of trustees to make expenditures for the preservation of the fund or its proper administration. Such expenditures shall be limited to what may be necessary to safeguard and administer the fund by means of court proceedings, and to stenographic and clerical assistance.

SOURCES: Codes, 1942, §§ 3494-03, 3494-12, 3494-25; Laws, 1924, ch. 189; Laws, 1930, ch. 55, §§ 2, 10, 23; Laws, 1966, ch. 594, § 3; Laws, 1987, ch. 511, § 27, eff from and after April 30, 1987.

Cross References — Transfer of disability and relief fund to Public Employees' Retirement System, see § 21-29-223.
Investment of part of fund, see § 21-29-227.

§ 21-29-227. Investment of part of disability and relief fund.

The authority is vested in the board of trustees to invest such part of said fund as may not be immediately required, in investments authorized under Section 25-11-121 with the right to change said investment from time to time, and with the right and duty to convert invested funds into current funds as the same may be needed for the purposes of this article.

SOURCES: Codes, 1942, § 3494-12; Laws, 1924, ch. 189; Laws, 1930, ch. 55, § 10; Laws, 1966, ch. 594, § 3; Laws, 1987, ch. 511, § 28, eff from and after April 30, 1987.

Cross References — Powers and duties of the board of disability and relief, see § 21-29-209.

Transfer of disability and relief fund to Public Employees' Retirement System, see § 21-29-223.

Allowances upon fund, see § 21-29-225.

§ 21-29-229. Tax on premiums of fire and lightning insurers.

The Board of Trustees of the Public Employees' Retirement System, as soon as it is decided that such city shall come within the terms of this article, shall notify the Insurance Commissioner of the State of Mississippi that such city is operating within such terms. The commissioner shall notify all insurance companies, which shall include mutual, interinsurer, and reciprocal associations or companies, transacting the business of fire and lightning insurance in the State of Mississippi, of the fact that such city is operating within such terms. In the event that any such insurance company writes or has written any insurance in said municipality, the rates of said insurance company being based in any way upon the efficiency and equipment of the fire department of said municipality, such company shall be notified that at the time that foreign insurance companies are required to report to the State Tax Commission the premiums charged or received in Mississippi, then such company, whether foreign or domestic, shall truly report to the State Tax Commission at the same time as reports on the general tax on premiums are made as provided in Section 27-15-107, sending a duplicate of such report to such board of trustees, the amount of premiums charged by said company for fire and lightning insurance on property situated in such city within the period covered by the report made to the State Tax Commission for purposes of taxation of such state, less premiums returned to policyholder and cancellations on account of policies not taken. It is the legislative intent that said report of premiums shall include and cover all premiums charged or received within said period, less returned premiums and cancellations as aforesaid in connection with the insurance of property situated in such city, which are reported for the purposes of taxation by said state. Such report for the purposes of this section shall not include premiums contracted for prior to such time as the commissioner shall have notified the company that such city is within the terms and purposes of this article. Said premiums so required to be reported shall be and they are hereby taxed to the extent of one-half of one percent (½ of 1%) of said premiums, after deducting said returned premiums and cancellations, which tax shall be paid to the State Tax Commission by the insurance company at the same time that the general tax on premiums is paid to the State Tax Commission as provided in Section 27-15-107. The insurance company paying the same shall notify the State Tax Commission of the name of the city responsible for the maintenance of such fire department and system, and, at the same time, shall give such city duplicate notice of the amount paid to the State Tax Commission. The State Tax Commission is hereby authorized and empowered to collect such taxes in the same manner and by the same means that he is required and empowered to collect other taxes imposed upon insurance premiums.

SOURCES: Codes, 1942, § 3494-07; Laws, 1924, ch. 189; Laws, 1930, ch. 55, § 6 ¶ 1; Laws, 1984, ch. 462, § 1; Laws, 1987, ch. 511, § 29; Laws, 1994, ch. 502, § 2, eff from and after passage (approved March 23, 1994).

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Revocation of insurance company's license by failure to report, see § 21-29-235.

§ 21-29-231. On what premiums tax may be imposed; tax not to be used as an element of premium.

Said tax on insurance premiums shall not be imposed or collected upon any premiums except upon those under insurance policies upon property situated in the municipality coming under the provisions of this article. The tax paid hereunder for the maintenance of such fire department system in any municipality coming under the provisions of this article, shall not be used as an element of any premium or be considered in the making of rates except in proper causes under the provisions of the rating bureau law in connection with property situated in the municipality to which said tax is paid.

SOURCES: Codes, 1942, § 3494-08; Laws, 1924, ch. 189; Laws, 1930, ch. 55, § 6 ¶ 2.

§ 21-29-233. Duty of state tax commission.

It shall be the duty of the State Tax Commission to collect and to enforce the collection of said tax of one-half of one percent (½ of 1%) upon all premiums paid to insurance companies doing business in said municipality, which said insurance companies have written insurance on rates, said rates having been compiled by taking into consideration the fire department and equipment of said municipality. Upon the State Tax Commission having collected said tax, it shall promptly pay the same to the board of trustees for the benefit of said fund for disability and relief of firemen and policemen.

SOURCES: Codes, 1942, § 3494-09; Laws, 1924, ch. 189; Laws, 1930, ch. 55, § 7; Laws, 1984, ch. 462, § 2; Laws, 1987, ch. 511, § 30, eff from and after April 30, 1987.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 21-29-235. Failure of insurance company to report.

Any fire insurance company, subject to the tax mentioned in Section 21-29-229, which shall fail to make a report or statement required therein after thirty days demand therefor by the commissioner of insurance, shall forfeit to said fund the sum of five hundred dollars, to be recovered by the commissioner for the use of such municipality, and the commissioner shall have the right to revoke the license of such company.

SOURCES: Codes, 1942, § 3494-22; Laws, 1924, ch. 189; Laws, 1930, ch. 55, § 20.

§ 21-29-237. Persons entitled to benefits.

Every member of said fire department and police department including its officers, but not including the governing authorities of said city on account of their relation as such to said fire department and/or police department, who are members of the disability and relief fund for firemen and policemen shall come under the provisions and benefits of this article, and shall receive all benefits provided for in this article. All firemen and policemen who are employed in the said fire department or police department after adoption of a resolution by the municipality in accordance with the provisions of subsection (c) of Section 21-29-17 shall not become members of the disability and relief fund for firemen and policemen.

SOURCES: Codes, 1942, § 3494-15; Laws, 1924, ch. 189; Laws, 1930, ch 55, § 13; Laws, 1976, ch. 463, § 11, eff from and after passage (approved May 22, 1976).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference in the last sentence. The reference to "Section 27-29-17" was changed to "Section 21-29-17." The Joint Committee ratified the correction at its August 5, 2008, meeting.

JUDICIAL DECISIONS

1. In general.

Section 21-29-237 providing that firemen and policemen employed after adoption of municipal resolution in accordance with § 21-29-17(c) shall not become members of disability and relief fund for firemen and policemen is not limited by "operating under provisions of this article" in § 21-29-17(c) so as to preclude municipality which had not previously had plan operating under §§ 21-29-1 et seq. from placing firemen and policemen employed after specified date in such a plan in lieu of previously existing plan under §§ 21-29-201 et seq.; nor does placement of firemen and policemen employed after specified date in different plan with lower benefits than those provided to previously employ firemen and policemen violate equal protection clause of Fourteenth Amendment to U.S. Constitution. Jackson Firefighters Ass'n Local 87 v. City of Jackson, 736 F.2d 209 (5th Cir. 1984).

RESEARCH REFERENCES

ALR. Misconduct as affecting right to pension or retention of position in retirement system. 76 A.L.R.2d 566.

Am Jur. 60A Am. Jur. 2d, Pensions and Retirement Funds §§ 1174, 1183, 1252.

63C Am. Jur. 2d, Public Officers and Employees §§ 177, 178.

CJS. 67 C.J.S., Officers and Public Employees §§ 421-432.

§ 21-29-239. Service records to be kept.

The Public Employees' Retirement System shall keep a record of service of the members of the fire department and police department, which record shall show the history of employment of each member of said fire department and police department. Said record shall be written up fully at the time such city comes within the terms of this article, and it shall thereafter be kept entered up fully and correctly. All records currently maintained by the municipality's affected membership shall be forwarded to the Public Employees' Retirement System not later than July 1, 1987. Any additional changes shall be forwarded to the Public Employees' Retirement System as made.

SOURCES: Codes, 1942, § 3494-13; Laws, 1924, ch. 189; Laws, 1930, ch. 55, § 11; Laws, 1987, ch. 511, § 31, eff from and after April 30, 1987.

§ 21-29-241. Disability relief.

If any member of the fire department and/or police department shall become or be found to be totally disabled for the discharge of his duties as a member of said fire department and/or police department, mentally or physically, by reason of sickness or injury caused or sustained by reason of service or discharge of his duty in said department, after such city shall have come within the terms of this article, said board of disability and relief shall order the payment and there shall be paid from said fund to said fireman and/or policeman each month thereafter an amount equal to fifty percent (50%) of said fireman's and/or policeman's monthly salary. Such amount shall be paid throughout such total disability for service.

If any member of the fire department and/or police department shall become or be found to be permanently and totally disabled for the discharge of his duties as a member of said fire department and/or police department, mentally or physically, by reason of sickness or injury, and said member shall have had not less than five (5) years' service with such department, there shall be paid to said fireman and/or policeman from said fund, for each year's active service, not to exceed a period of twenty (20) years, one-fortieth (1/40) of the monthly salary of such fireman and/or policeman at the time such disability is incurred. Such amount shall be paid throughout such permanent and total disability.

In passing upon the question of disability, said board shall refer the matter to its medical board, or such other physician or physicians as it may deem proper, and said board may require like examinations from time to time throughout the period of disability claimed by said fireman and/or policeman.

If said city pays a salary to its fireman and/or policeman while disabled in an amount equal to the disability relief allowed hereunder, said fireman and/or policeman shall not be entitled to any disability relief hereunder.

SOURCES: Codes, 1942, §§ 3485.5, 3494-17; Laws, 1924, ch. 189; Laws, 1930, ch 55, § 15; Laws, 1964, chs. 504, 505, § 2; Laws, 1974, ch. 395, § 2; Laws, 1987, ch. 511, § 32, eff from and after April 30, 1987.

Cross References — Benefits payable upon death of member, see § 21-29-255.

RESEARCH REFERENCES

ALR. Requiring submission to physical examination or test as violation of constitutional rights. 25 A.L.R.2d 1407.

Determination whether firefighter's disability is service-connected for disability pension purposes. 7 A.L.R.4th 799.

Am Jur. 60A Am. Jur. 2d, Pensions and Retirement Funds §§ 1211, 1214, 1228 et seq., 1244 et seq.

63C Am. Jur. 2d, Public Officers and Employees §§ 177, 178.

CJS. 62 C.J.S., Municipal Corporations §§ 682-695, 740-757, 759, 760-762.

67 C.J.S., Officers and Public Employees §§ 421-432.

81 C.J.S., Social Security and Public Welfare §§ 270, 271, 274-277.

§ 21-29-243. Physical and mental examination.

In all matters involving the disability or sickness of a member of such fire and/or police department, such member shall submit himself to physical and mental examination when and as required by said disability and relief board of said governing authorities. A failure or refusal so to do shall suspend the benefits of this article until such time as he shall submit himself to such examination.

SOURCES: Codes, 1942, § 3494-21; Laws, 1924, ch. 189; Laws, 1930, ch. 55, § 21.

RESEARCH REFERENCES

ALR. Requiring submission to physical examination or test as violation of constitutional rights. 25 A.L.R.2d 1407.

§ 21-29-245. Retirement benefits.

If any member of said fire and/or police department who has been in paid fire and/or police department service for as long as twenty (20) years before making application hereinafter mentioned, the last ten (10) years of which shall have been continuous in the city in which the application is made, shall make written application for retirement and relief, the board of disability and relief shall without medical examinations of disability, retire him from active service in said fire and/or police department. Upon such retirement from active service said disability and relief board shall order the payment to such retired member monthly from said fund a sum equal to fifty percent (50%) of the average monthly base salary and longevity pay received as salary by such member in the six-month period next before the filing of such application in said fire and/or police department. Such payments shall thereafter be made to said retired member for life, such payments to be known as "retired relief."

Any member of the fire and/or police department who has been in paid fire and/or police department service for longer than twenty (20) years shall be entitled to and shall receive additional retired relief payment for life in a sum equal to one and seven-tenths percent (1.7%) of the same monthly base salary and longevity pay received by such member in the six-month period next preceding the filing of said application for each full year of service in excess of twenty (20) years' service. However, such additional retired relief payment shall be paid only for each year served after July 1, 1966. No retired relief payment to any member shall exceed sixty-six and two-thirds percent (66-⅔%) of the average monthly base salary and longevity pay received by a member for the six-month period next preceding the filing of said application, except such other additional benefits as may be hereinafter provided.

The board of disability and relief shall, when a member of the fire and/or police department completes thirty-five (35) years of paid employment, or attains the age of sixty (60), whichever occurs first, retire him from active service in said fire and/or police department and order the payment of such funds as the member is entitled to under this article.

Periods of time in which a member may have been inactive on account of physical or mental disability shall not be excluded in computing the twenty-year period and the ten-year period hereinabove mentioned. Neither shall there be excluded therefrom periods of time within which a member may have been absent from his employment while serving in the Armed Forces of the United States, or any civil employee engaged by the Armed Forces of the United States while serving outside the continental United States, in time of war during World War I, World War II, the Korean Conflict, Cuban Crisis, Berlin Crisis, Vietnam Conflict, or when involuntarily called on active duty, provided that the maximum period for such creditable service shall be four (4) years unless positive proof can be furnished by such person that he was retained in the Armed Forces by cause beyond his control, and without opportunity of discharge, and provided that the discharge or release of such member from the Armed Forces was under conditions other than dishonorable. Any member who has been retired or is voluntarily retired hereunder, or who has received relief or disability benefits hereunder, shall be required to report such duties as then may be required of them.

SOURCES: Codes, 1942, § 3494-18; Laws, 1924, ch. 189; Laws, 1930, ch. 55 § 16; Laws, 1948, ch. 421; Laws, 1966, ch. 596, § 1; Laws, 1968, ch. 575, § 1; Laws, 1970, ch. 513, § 1; Laws, 1973, ch. 404, § 1; Laws, 1987, ch. 511, § 33, eff from and after April 30, 1987.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the second paragraph of this section. The words "one and seven-tenths percent (1-⅐%)," were changed to "one and seven-tenths percent (1.7%)." The Joint Committee ratified the correction at its May 16, 2002 meeting.

Cross References — Cost-of-living increases in retirement benefits, see § 21-29-247.

Alternative program of retirement benefits for certain municipalities, see § 21-29-251.

Benefits payable upon death of member, see § 21-29-255.

ATTORNEY GENERAL OPINIONS

By reading Section 21-29-245 together with Section 21-29-313, it appears member would be eligible to retire upon completing 20 years of service, as calculated by schedule, which depending on actual number of months worked in each fiscal year, may allow member to retire several months prior to working twenty full years. Scott, June 2, 1993, A.G. Op. #93-0344.

RESEARCH REFERENCES

ALR. Disciplinary suspension of public employee as affecting computation of length of service for retirement or pension purposes. 6 A.L.R.2d 506.

Constitutionality, construction, and application of statute or ordinance providing for reduction of pension or retirement benefit of public officer or employee because of independent income. 7 A.L.R.2d 692.

Causal connection between fireman's or policeman's performance of official duties and his disability, for purpose of recovering disability benefits. 27 A.L.R.2d 974.

Misconduct as affecting right to pension or retention of position in retirement system. 76 A.L.R.2d 566.

Am Jur. 60A Am. Jur. 2d, Pensions, etc. §§ 1192 et seq., 1228 et seq., 1244 et seq.

63C Am. Jur. 2d, Public Officers and Employees §§ 177, 178.

CJS. 62 C.J.S., Municipal Corporations §§ 682-695, 740-757, 759, 760-762.

67 C.J.S., Officers and Public Employees §§ 421-432.

§ 21-29-247. Cost-of-living increases.

(1) From and after January 1, 1971, all persons receiving retirement benefits under Section 21-29-245, or becoming eligible for retirement benefits under Section 21-29-245, and retiring or to be retired from service in a municipality having an assessed valuation of at least Three Hundred Forty Million Dollars $340,000,000.00, according to the 1967 compiled assessment rolls, shall receive in addition to all benefits set forth in Section 21-29-245 the following percentage increases as may be determined by the cost-of-living index as set by the United States government under the following formula:

In any calendar year following 1970 in which the cost-of-living index as set by the United States government for January exceeds the cost-of-living index as set by the United States government for the previous January, the pension payments beginning with March of the current year shall be increased in an amount equal to the percentage increase determined by the increase in the cost-of-living index as set by the United States government.

The accumulated percentage increases provided under this subsection (1) that may be developed by increases in the cost-of-living index as set by the United States government shall not exceed twelve percent (12%).

(2) From and after January 1, 2002, all persons receiving retirement benefits or disability retirement benefits under Section 21-29-241 or 21-29-245

or becoming eligible for retirement benefits or disability retirement benefits under Section 21-29-241 or 21-29-245 and retiring or to be retired from service in a municipality having an assessed valuation of at least Three Hundred Forty Million Dollars ($340,000,000.00), according to the 1967 complied assessment rolls, who are receiving a cost-of-living increase provided under subsection (1) of this section or Chapter 869, Local and Private Laws of 1992, as the case may be, that is equal to an accumulated percentage increase of twelve percent (12%) of the amount of the retirement benefits, shall receive the following cost-of-living increases: In addition to all benefits provided under Section 21-29-241 or 21-29-245, and the cost-of-living increases provided under subsection (1) of this section or Chapter 869, Local and Private Laws of 1992, as the case may be, those persons shall receive the following percentage increases as may be determined by the cost-of-living index as set by the United States government under the following formula:

In any calendar year in which a person is eligible for cost-of-living increases under this subsection (2) in which the cost-of-living index as set by the United States government for January exceeds the cost-of-living index as set by the United States government for the previous January, the pension payments beginning with March of the current year shall be increased in an amount equal to the percentage increase determined by the increase in the cost-of-living index as set by the United States government.

The accumulated percentage increases provided under this subsection (2) that may be developed by increases in the cost-of-living index as set by the United States government shall not exceed seven and one-half percent (7-½%).

(3) Any person who is receiving minimum monthly benefits under Chapter 898, Local and Private Laws of 1987, shall receive in addition to all benefits provided under Chapter 898, Local and Private Laws of 1987, the following percentage increases as may be determined by the cost-of-living index as set by the United States government under the following formula:

In any calendar year following 2001 in which the cost-of-living index as set by the United States government for January exceeds the cost-of-living index as set by the United States government for the previous January, the pension payments beginning with March of the current year shall be increased in an amount equal to the percentage increase determined by the increase in the cost-of-living index as set by the United States government.

The accumulated percentage increases provided under this subsection (3) that may be developed by increases in the cost-of-living index as set by the United States government shall not exceed seven and one-half percent (7-½%).

(4) The cost-of-living increases authorized under subsections (2) and (3) of this section shall not be provided unless the disability and relief fund for firemen and policemen of any municipality to which this section applies:

(a) Is actuarially sound, as shown by the most recent actuarial study required by Section 21-29-221; and

(b) Will remain actuarially sound if the cost-of-living increases are provided, as shown by a certified statement from the actuarial firm that prepared the most recent actuarial study.

(5) The Board of Trustees of the Public Employees' Retirement System shall provide the cost-of-living increases authorized under subsections (2) and (3) of this section to the persons authorized and entitled to receive them, after all of the following conditions have been met:

(a) The governing authorities of any municipality to which this section applies must adopt a resolution to provide for the cost-of-living increases, and transmit the resolution to the board of trustees;

(b) The advisory board on the disability and relief fund provided for in Section 21-29-207 must adopt a resolution supporting the providing of the cost-of-living increases, and transmit the resolution to the board of trustees; and

(c) The board of trustees must receive the resolutions from the governing authorities and the advisory board, and receive the most recent actuarial study of the disability and relief fund and the certified statement from the actuarial firm that the disability and relief fund will remain actuarially sound if the cost-of-living increases are provided.

SOURCES: Codes, 1942, § 3494-18; Laws, 1924, ch. 189; Laws, 1930, ch. 55, § 16; Laws, 1948, ch. 421; Laws, 1966, ch. 596, § 1; Laws, 1968, ch. 575, § 1; Laws, 1970, ch. 513, § 1; Laws, 2002, ch. 496, § 1, eff from and after Mar. 1, 2002.

Cross References — Retirement benefits, see § 21-29-245.
Refund of contributions, see § 21-29-249.
Alternative program of retirement benefits for certain municipalities, see § 21-29-251.

§ 21-29-249. Refunds.

Any member of the fire and/or police department who ceases to be an employee before becoming eligible to receive either a service or disability allowance, as provided by this article, may request in writing to the board of disability and relief for a refund, but without interest, which he shall be paid within one year of the filing of the request.

SOURCES: Codes, 1942, § 3494-18; Laws, 1924, ch. 189; Laws, 1930, ch. 55, § 16; Laws, 1948, ch. 421; Laws, 1966, ch. 596, § 1; Laws, 1968, ch. 575, § 1; Laws, 1970, ch 513, § 1, eff from and after January 1, 1971.

Cross References — Retirement benefits, see § 21-29-245.
Cost-of-living increases, see § 21-29-247.
Alternative program of retirement benefits for certain municipalities, see § 21-29-251.
Refund of contributions from alternative retirement plan, see § 21-29-253.

§ 21-29-251. Alternative program; retirement benefits.

Any municipality which has a population in excess of twenty thousand according to the 1970 federal decennial census and which lies within any Class 1 county touching the Mississippi River, located wholly within the Yazoo-Mississippi Delta Levee District and which has an approximate land area of five hundred seventy square miles, is hereby authorized and empowered, in its discretion, to adopt the following retirement program for policemen and firemen as an alternative to the program established in Sections 21-29-245 through 21-29-249, and which shall otherwise conform with the provisions of this article.

Any member of said fire and/or police department who has been in, and has received compensation for, fire and/or police department service for twenty years before the filing of an application as hereinafter provided, with the preceding ten years of service being continuous in the city to which application is made, may file a written application for retirement relief. Thereupon, said board of disability and relief shall retire such member from active service without a medical examination of disability and shall order the monthly payment to him from said fund of an amount equal to fifty percent of the average monthly base salary and longevity pay received as salary by him in the six-month period preceding the filing of such application. Thereafter, such payment, to be known as "retirement relief," shall be made to such retired member for the remainder of his life.

Any member of said fire and/or police department who has been in, and has received compensation for, fire and/or police department service for more than twenty years shall be entitled to, and shall receive, additional retirement relief for the remainder of his life of an amount equal to one and seven-tenths percent of the same average monthly base salary and longevity pay received by such member as salary in the six-month period preceding the filing of such application for each full year of service in excess of twenty years. However, such retired member shall receive the additional retirement relief provided in this paragraph only for each full year of service in excess of twenty years completed after July 1, 1966. No such retired member shall receive such additional retirement relief in excess of sixty-six and two-thirds percent of the same average monthly base salary and longevity pay received as salary by him in the six-month period preceding the filing of such application, excluding such other benefits as may be hereinafter provided.

Any member of said fire and/or police department who (1) has been in, and has received compensation for, fire and/or police department service for a period equal to or greater than five years and less than twenty years, and (2) has been forced to retirement on account of age may file a written application for pro rata retirement relief. Thereupon, said disability and relief board shall retire such member from active service without a medical examination for disability and shall order the monthly payment to him from said fund of an amount equal to two and one-half percent of the average monthly base salary and longevity pay received as salary by him in the six-month period preceding the filing of such application for each full year of active service.

Periods of time in which a member may have been inactive on account of physical or mental disability shall not be excluded in computing the hereinbefore-mentioned time periods, except that such periods of inactivity shall be excluded in computing the aforementioned five-year pro rata eligibility period. Periods of time in which a member may have been absent from such employment on account of active service in the Army or Navy of the United States, the United States Marine Corps or the United States Coast Guard between September 16, 1940, and July 25, 1947, or while as a civil employee engaged by the Army or Navy while serving outside the continental United States shall not be excluded in computing the hereinbefore-mentioned time period except that such periods of inactivity shall be excluded in computing the aforementioned five-year pro rata eligibility period. The discharge or release of such member from such armed forces shall have been under conditions other than dishonorable. Any member who has been retired or is voluntarily retired under this section, or who has received relief or disability benefits under this section, shall be required to report such duties as required by said disability and relief board.

The disability and relief board shall, when a member of the fire and/or police department completes thirty-five years of paid employment or attains the age of sixty, whichever occurs first, retire him from active service and order the payment of such funds as the member is entitled to under the provisions of this section. However, the continued employment of any member who has not completed twenty years of service may be authorized by the governing authority of the municipality on a year-to-year basis until the employee completes twenty years of active service or reaches the age of seventy, whichever occurs first.

Any person receiving retirement relief under the provisions of this section shall no longer be entitled to said relief upon attachment with a paid fire department or police department in another city having a paid retirement relief program for policemen or firemen.

The entitlement, under the particular retirement program in operation prior to the adoption of the alternative retirement program established in this section, of a policeman or fireman thereunder to any benefits or rights thereof shall not be diminished on account of the transition by such municipalities to the alternative retirement program established by this section.

SOURCES: Codes, 1942, § 3494-18.5; Laws, 1971, ch. 422, § 1, eff from and after January 1, 1971.

Cross References — Refunding of contributions by former employee, see § 21-29-253.

RESEARCH REFERENCES

ALR. Disciplinary suspension of public employee as affecting computation of length of service for retirement or pension purposes. 6 A.L.R.2d 506.

Constitutionality, construction, and application of statute or ordinance providing for reduction of pension or retirement benefit of public officer or employee because of independent income. 7 A.L.R.2d 692.

Causal connection between fireman's or policeman's performance of official duties and his disability, for purpose of recovering disability benefits. 27 A.L.R.2d 974.

Am Jur. 60A Am. Jur. 2d, Pensions and Retirement Funds, 1192 et seq., 1228 et seq., 1244 et seq.

63C Am. Jur. 2d, Public Officers and Employees §§ 177, 178.

CJS. 62 C.J.S., Municipal Corporations §§ 682-695, 740-757, 759, 760-762.

67 C.J.S., Officers and Public Employees §§ 421-432.

§ 21-29-253. Alternative program; refunds.

Any member of said fire and/or police department who ceases to be an employee thereof prior to becoming eligible for any retirement relief provided for in Section 21-29-251 may file a written application to said disability and relief board for a refund of any and all monies contributed to said fund by said member, and thereafter within one year shall receive, without interest, such monies.

SOURCES: Codes, 1942, § 3494-18.5; Laws, 1971, ch. 422, § 1, eff from and after January 1, 1971.

Cross References — Refund of contributions, see § 21-29-249.
Alternative retirement program, see § 21-29-251.

§ 21-29-255. Death benefits.

[For any municipality that has not elected to authorize the continuation or reinstatement of spouse retirement benefits under the provisions of Section 21-29-329, this section shall read as follows:]

(1) If any member of the fire or police department dies in active service, or dies in inactive service on account of disability approved for disability relief under Section 21-29-241, as a result of injury received while in the discharge of duty in the service of the fire department or police department, or dies as a result of sickness or disease, due to the discharge of duty while in service as a member of the fire or police department, or if the member dies while entitled to relief after retirement under Section 21-29-245, the amount of disability relief or retirement relief being paid, or which should have been properly paid, shall continue to be paid from the fund to the spouse of the deceased member for the use of the spouse and the child, or children of the deceased member, so long as the spouse remains unmarried. If, after the marriage of the spouse, there remains a child or children of the deceased member, the payments shall continue to be made to a parent or lawful custodian of the child or children without the necessity of appointment as guardian for the benefit of the child or children. After the death or marriage of the spouse, all payments to the spouse shall cease, and after the death of any child or children of the deceased, all payments to the child or children shall cease. If the deceased member is not survived by a spouse or child or children, but is survived by a father or a mother dependent upon him or her, the payments shall continue to be made to the dependent father or mother, or both, so long as each lives. If there is no dependent father or mother surviving the deceased member, the payments shall continue to be made to the unmarried dependent sister or sisters of the deceased member, so long as the beneficiary or beneficiaries remain unmarried. Upon the death or marriage of any such sister, all payments shall cease to her. Payments to

dependents under this section are for services rendered to the members of the fire and/or police department, and the amount of payments is within the discretion of the board of disability and relief, but in no event shall the amount payable under this section be in excess of the amount that would have been payable as disability and relief to a member of the department.

If any member of the fire or police department dies while a member of the fire department or police department, and the member has not less than five (5) years' service with the department, there shall be paid from the firemen's and policemen's disability and relief fund the following benefits:

(a) For each year's active service, not to exceed a period of twenty (20) years, one-fortieth (1⁄40) of the average monthly salary or compensation received by the member in the six-month period next preceding his or her death; and

(b) For each full year of active service in excess of twenty (20) years' service, an additional payment in a sum equal to one and seven-tenths percent (1-7⁄10%) of the same average monthly base salary and longevity pay received by the member in the six-month period next preceding his or her death (provided that no such payment shall exceed sixty-six and two-thirds percent (66-2⁄3%) of the average monthly base salary and longevity pay received by a member for the six-month period next preceding his or her death) to the spouse of the deceased member for the use of the spouse and the child or children of the deceased member, so long as the spouse remains unmarried and if, after the marriage of the spouse, there remains a child or children of the deceased member, the payments shall continue to be made to a parent or lawful custodian of the child or children without the necessity of appointment as guardian for the benefit of the child or children, and after the death or marriage of the spouse, all payments to the spouse shall cease, and after the death of any child or children of the deceased member, all payments to the child or children shall cease. If the deceased member is not survived by a spouse or child or children, but is survived by a father, mother or an unmarried sister dependent upon him or her, the payments shall continue to be made to the dependent father or mother or both, so long as each lives, or if there is no dependent father or mother surviving the deceased member, the payments shall continue to be made to the dependent sister or sisters of the deceased member, or dependent incurable children, so long as the beneficiary or beneficiaries remain unmarried. Upon the death or marriage of any such sisters, all payments shall cease to her.

(2) For purposes of this section:

(a) "Dependent" means wholly dependent.

(b) "Child" or "children" means:

(i) Children of the deceased member under the age of eighteen (18);

(ii) Children of the deceased member eighteen (18) years of age or older who have not yet reached their twenty-third birthday and are pursuing a full-time education; or

(iii) Children of the deceased member who, though eighteen (18) years of age or older, are wholly dependent upon the deceased member and incapable of self-support by reason of mental or physical disability.

[For any municipality that has elected to authorize the continuation or reinstatement of spouse retirement benefits under the provisions of Section 21-29-329, this section shall read as follows:]

(1) If any member of the fire or police department dies in active service, or dies in inactive service on account of disability approved for disability relief under Section 21-29-241, as a result of injury received while in the discharge of duty in the service of the fire department or police department, or dies as a result of sickness or disease, due to the discharge of duty while in service as a member of the fire or police department, or if the member dies while entitled to relief after retirement under Section 21-29-245, the amount of disability relief or retirement relief being paid, or which should have been properly paid, shall continue to be paid from the fund to the spouse of the deceased member for life for the use of the spouse and the child or children of the deceased member. If the deceased member is not survived by a spouse, but there remains a child or children of the deceased member, the payments shall continue to be made to a parent or lawful custodian of the child or children without the necessity of appointment as guardian for the benefit of the child or children. After the death of the spouse, all payments to the spouse shall cease, and after the death of any child or children of the deceased member, all payments to the child or children shall cease. If the deceased member is not survived by a spouse or child or children, but is survived by a father or a mother dependent upon him or her, the payments shall continue to be made to the dependent father or mother, or both, so long as each lives, or if there is no dependent father or mother surviving the deceased member, the payments shall continue to be made to the unmarried dependent sister or sisters of the deceased member, so long as the beneficiary or beneficiaries remain unmarried. Upon the death or marriage of any such sister, all payments shall cease to her. Payments to dependents under this section are for services rendered to the members of the fire and/or police department, and the amount of payments is within the discretion of the board of disability and relief, but in no event shall the amount payable under this section be in excess of the amount that would have been payable as disability and relief to a member of the department.

If any member of the fire or police department dies while a member of the fire department or police department, and the member has had not less than five (5) years' service with the department, there shall be paid from the firemen's and policemen's disability and relief fund the following benefits:

(a) For each year's active service, not to exceed a period of twenty (20) years, one-fortieth (1/40) of the average monthly salary or compensation received by the member in the six-month period next preceding his or her death; and

(b) For each full year of active service in excess of twenty (20) years service, an additional payment in a sum equal to one and seven-tenths percent (1-7⁄10%) of the same average monthly base salary and longevity pay received by the member in the six-month period next preceding his or her death (provided that no such payment shall exceed sixty-six and two-thirds percent (66-2⁄3%) of the average monthly base salary and longevity pay received by a member for the six-month period next preceding his or her death) to the spouse of the deceased member for the use of the spouse and the child or children of the deceased member, so long as the spouse lives and if, after the death of the spouse, there remains a child or children of the deceased member, the payments shall continue to be made to a parent or lawful custodian of the child or children without the necessity of appointment as guardian for the benefit of the child or children. After the death of the spouse, all payments to the spouse shall cease, and after the death of any child or children of the deceased member, all payments to the child or children shall cease. If the deceased member is not survived by spouse or child or children, but is survived by a father, mother or an unmarried sister dependent upon him or her, the payments shall continue to be made to the dependent father or mother or both, so long as each lives, or if there is no dependent father or mother surviving the deceased member, the payments shall continue to be made to the dependent sister or sisters of the deceased, or dependent incurable children, so long as the beneficiary or beneficiaries remains unmarried. Upon the death or marriage of any such sisters, all payments shall cease to her.

(2) For the purposes of this section:

(a) "Dependent" means wholly dependent.

(b) "Child" or "children" means:

(i) Children of the deceased member under the age of eighteen (18);

(ii) Children of the deceased member eighteen (18) years of age or older who have not yet reached their twenty-third birthday and are pursuing a full-time education; or

(iii) Children of the deceased member who, though eighteen (18) years of age or older, are wholly dependent upon the deceased and incapable of self-support by reason of mental or physical disability.

SOURCES: Codes, 1942 §§ 3487.5, 3494-19; Laws, 1924, ch. 189; Laws, 1930, ch. 55, § 17; Laws, 1962, ch. 546; Laws, 1974, ch. 437, § 2; Laws, 1978, ch. 435, § 3; Laws, 1980, ch. 358, § 1; Laws, 2004, ch. 561, § 13, eff from and after July 1, 2004.

Cross References — Additional provisions governing death benefits, see § 21-29-147.

RESEARCH REFERENCES

ALR. Effect of divorce, annulment or remarriage on widow's pension or bonus rights or social security benefits. 85 A.L.R.2d 242.

Variations in retirement, pension, or death benefit plans as unlawful employment practice under 42 USCS § 2000e-2(a). 35 A.L.R. Fed. 15.

Am Jur. 60A Am. Jur. 2d, Pensions and Retirement Funds §§ 1197 et seq., 1228, 1244 et seq.

CJS. 62 C.J.S., Municipal Corporations §§ 682-695, 740-757, 759, 760-762.

§ 21-29-257. Exemption from process.

No part of said fund to which any of said firemen or policemen shall be entitled, or which may be payable or ordered paid to him shall be seized, attached, assigned or levied upon by any writ of attachment, garnishment, execution, sequestration or other like process or writ.

SOURCES: Codes, 1942, § 3494-16; Laws, 1924, ch. 189; Laws, 1930, ch. 55, § 14; Laws, 1987, ch. 511, § 34, eff from and after April 30, 1987.

RESEARCH REFERENCES

Am Jur. 6 Am. Jur. 2d, Attachment and Garnishment § 146.

§ 21-29-259. Suit shall not be filed in cases of insufficient fund.

Should said fund at any time be insufficient to make all payments properly payable therefrom, the beneficiaries shall not file any suit against said city, its governing authorities, or said disability and relief board, but the amounts available shall be properly prorated until such time as funds may be sufficient to make all payments thereafter for the full amount properly allowed.

SOURCES: Codes, 1942, § 3494-20; Laws, 1924, ch. 189; Laws, 1930, ch. 55, § 18.

§ 21-29-261. Application of article.

This article shall apply to municipalities whether under private charter or existing and operating under the general statutes of the State of Mississippi.

SOURCES: Codes, 1942, § 3494-23; Laws, 1924, ch. 189; Laws, 1930, ch. 55, § 21.

ARTICLE 7.

MISCELLANEOUS PROVISIONS.

SEC.

21-29-301. Creditable service provided under certain circumstances for membership service interrupted by qualified military service.
21-29-305. Employers to pick up member contributions to employees' retirement and disability systems.
21-29-307. Benefits exempt from taxes, attachment or other process, and unassignable; deductions from retirement allowances of employer or system sponsored group life or health insurance.
21-29-311. Additional optional benefits available.
21-29-313. Schedule for computation of membership service or prior service.

21-29-315. Repayment of refund after reemployment following retirement for purpose of reestablishing contributing membership.
21-29-316. Rollover distribution of accumulated contributions to eligible retirement plan or individual retirement account.
21-29-317. Maximum annual retirement allowance.
21-29-319. Employment-related fringe benefits.
21-29-321. Determination of average monthly base salary and longevity pay.
21-29-323. Determination of amount of death benefits to be paid to or for benefit of dependent children.
21-29-325. Payment of retirement benefits by means of direct deposit.
21-29-327. Board of Trustees of Public Employees' Retirement System authorized to assess interest and bring suit on delinquent payments from municipalities whose retirement funds it administers.
21-29-329. Municipalities may adopt resolutions allowing spouses receiving retirement benefits to continue to receive spouse benefits for life, even after remarriage.
21-29-331. Persons to whom benefits payable in event of death or disqualification of designated beneficiary.
21-29-333. Waiver of benefits from the general municipal retirement system or firemen's and policemen's disability and relief fund.

§ 21-29-301. Creditable service provided under certain circumstances for membership service interrupted by qualified military service.

(1) Any member of the Municipal Retirement System whose membership service is interrupted as a result of qualified military service within the meaning of Section 414(u)(5) of the Internal Revenue Code, and who has received the maximum service credit available under Article 1, 3 or 5 of this chapter, shall receive creditable service for the period of qualified military service that does not qualify as creditable service under Article 1, 3 or 5 of this chapter upon reentering membership service in an amount not to exceed five (5) years if:

(a) The member pays the contributions he would have made to the retirement system if he had remained in membership service for the period of qualified military service based upon his salary at the time his membership service was interrupted;

(b) The member returns to membership service within ninety (90) days of the end of his qualified military service; and

(c) The employer at the time the member's service was interrupted and to which employment the member returns pays the contribution it would have made into the retirement system for such period based on the member's salary at the time the service was interrupted.

(2) The payments required to be made in subsection (1)(a) of this section may be made over a period beginning with the date of return to membership service and not exceeding three (3) times the member's qualified military service; however, in no event shall such period exceed five (5) years.

(3) The member shall furnish proof satisfactory to the board of trustees of certification of military service showing dates of entrance into qualified service

and the date of discharge as well as proof that the member has returned to active employment within the time specified.

SOURCES: Codes, 1942, § 3494.3; Laws, 1954, ch. 348; Laws, 2001, ch. 438, § 9; Laws, 2002, ch. 627, § 20, eff from and after July 1, 2002.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in (1)(c), as amended by Laws, 2001, ch. 438, § 9. The words "The employee at the time" were changed to "The employer at the time." The Joint Committee ratified the correction at its April 26, 2001 meeting.

Federal Aspects — Qualified military service within the meaning of Section 414(u)(5) of the Internal Revenue Code, see 26 USCS § 414(u)(5).

§ 21-29-305. Employers to pick up member contributions to employees' retirement and disability systems.

Each employer shall pick up the member contributions required by Sections 21-29-17, 21-29-117 and 21-29-219, Mississippi Code of 1972, for all compensation earned after January 1, 1989, and the contributions so picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code and the Mississippi Income Tax Code; however, each employer shall continue to withhold federal and state income taxes based upon such contributions until the Internal Revenue Service or the federal courts rule that, pursuant to Section 414(h) of the United States Internal Revenue Code, these contributions shall not be included as gross income of the member until such time as they are distributed or made available. The employer may pick up these contributions by a reduction in the cash salary of the member, or by an offset against a future salary increase, or by a combination of a reduction in salary and offset against a future salary increase. If member contributions are picked up they shall be treated for all purposes of the General Municipal Employees' Retirement System and Firemen's and Policemen's Disability Relief Funds under Articles 1, 3 and 5 of this chapter in the same manner and to the same extent as member contributions made prior to the date picked up.

SOURCES: Laws, 1989, ch. 503, § 1; Laws, 2001, ch. 438, § 10, eff from and after July 1, 2001.

Federal Aspects — Section 414(h) of United States Internal Revenue Code, see 26 USCS § 414(h).

§ 21-29-307. Benefits exempt from taxes, attachment or other process, and unassignable; deductions from retirement allowances of employer or system sponsored group life or health insurance.

(1) The right of a person to an annuity, a retirement allowance, or benefit, or to the return of contributions, or to any optional benefit or any other right

accrued or accruing to any person under the provisions of Articles 1, 3 or 5 of this chapter; the system; and the monies in the system created by such articles, are hereby exempt from any state, county or municipal ad valorem taxes, income taxes, premium taxes, privilege taxes, property taxes, sales and use taxes, or other taxes not so named, notwithstanding any other provision of law to the contrary, and exempt from levy and sale, garnishment, attachment or any other process whatsoever, and shall be unassignable except as specifically otherwise provided in Article 1, 3 or 5 of this chapter effective January 1, 1988, and except as otherwise provided in subsection (2) of this section.

(2) Any retired member or beneficiary receiving a retirement allowance or benefit under Article 1, 3 or 5 of this chapter may authorize the Public Employees' Retirement System to make deductions from the retirement allowance or benefit for the payment of employer or system sponsored group life or health insurance. The deductions authorized under this subsection shall be subject to rules and regulations adopted by the Board of Trustees of the Public Employees' Retirement System.

SOURCES: Laws of 1989, ch. 503, § 2; Laws, 1990, ch. 523, § 1; Laws, 1993, ch. 523, § 2; Laws, 2004, ch. 531, § 1, eff from and after July 1, 2004.

Editor's Note — Laws of 1990, ch. 523, § 8, effective from and after January 1, 1990, provides as follows:

"SECTION 8. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws, 1993, ch. 523, § 6, effective from and after January 1, 1994, provides as follows:

"SECTION 6. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Rights to any benefit under General Municipal Employees' Retirement provisions governed by this section, see § 21-29-51.

RESEARCH REFERENCES

ALR. What constitutes order made pursuant to state domestic relations law for purposes of qualified domestic relations order exception to antialienation provision of Employee Retirement Income Security Act of 1974 (29 USCS § 1056(d)). 79

A.L.R.4th 1081.

§ 21-29-311. Additional optional benefits available.

Any municipality providing benefits under Articles 1, 3 or 5 of this chapter may provide the following additional optional benefits:

(a) Refunds of member contributions to the estate of the deceased at the time of death when the deceased does not have eligible beneficiaries.

(b) Benefits to dependent children through the age of twenty-three (23) when the dependent child or children are full-time college students.

SOURCES: Laws, 1989, ch. 503, § 3, eff from and after July 1, 1989.

§ 21-29-313. Schedule for computation of membership service or prior service.

Notwithstanding any other provision of Articles 1, 3 or 5, in the computation of membership service or prior service under the provisions of Articles 1, 3 and 5, the following schedule shall govern: ten (10) or more months of service during any fiscal year shall constitute a year of service; seven (7) months to nine (9) months, inclusive, three-quarters (¾) of a year of service; four (4) months to six (6) months, inclusive, one-half (½) year of service; one (1) month to three (3) months, inclusive, one-quarter (¼) of a year of service.

Benefits payable under the provisions of Articles 1, 3 and 5 that previously were made on the basis of full years of creditable service shall be computed on the basis of the fractional years of service as provided in this section beginning July 1, 1991.

SOURCES: Laws, 1991, ch. 513, § 15, eff from and after July 1, 1991.

ATTORNEY GENERAL OPINIONS

By reading Section 21-29-245 together with Section 21-29-313, it appears member would be eligible to retire upon completing 20 years of service, as calculated by schedule, which depending on actual number of months worked in each fiscal year, may allow member to retire several months prior to working twenty full years. Scott, June 2, 1993, A.G. Op. #93-0344.

§ 21-29-315. Repayment of refund after reemployment following retirement for purpose of reestablishing contributing membership.

Any active member who previously received a refund under either Article 1, 3 or 5 and who was reemployed and again became a contributing member of the applicable retirement system may repay all amounts previously received as a refund, together with regular interest at the rate as determined by the board, covering the period from the date of refund to the date of repayment. Upon such repayment, the active member shall again receive credit for the entire period of creditable service that was forfeited upon the receipt of the refund.

SOURCES: Laws, 1991, ch. 513, § 16, eff from and after July 1, 1991.

§ 21-29-316. Rollover distribution of accumulated contributions to eligible retirement plan or individual retirement account.

(1) Pursuant to the Unemployment Compensation Amendments of 1992 (Public Law 102-318 (UCA)), a member or the spouse of a member who is an eligible beneficiary entitled to a refund under Article 1, 3 or 5 of this chapter may elect on a form prescribed by the board under rules and regulations established by the board, to have an eligible rollover distribution of accumulated contributions payable under this section paid directly to an eligible retirement plan, as defined under applicable federal law, or an individual retirement account. If the member or the spouse of a member who is an eligible beneficiary makes that election and specifies the eligible retirement plan or individual retirement account to which the distribution is to be paid, the distribution will be made in the form of a direct trustee-to-trustee transfer to the specified eligible retirement plan. A non-spouse beneficiary may elect to have an eligible rollover distribution paid in the form of a direct trustee-to-trustee transfer to an individual retirement account established to receive the distribution on behalf of the non-spouse beneficiary. Flexible rollovers under this subsection shall not be considered assignments under Section 21-29-307.

(2) From and after July 1, 2001, subject to the rules adopted by the board of trustees, any plan under this chapter shall accept an eligible rollover distribution or a direct transfer of funds from another eligible retirement plan or an individual retirement account in payment of all or a portion of the cost to repay a refund as permitted by the plan. The plans may only accept rollover payments in an amount equal to or less than the balance due for reinstatement of service credit. The rules adopted by the board of trustees shall condition the acceptance of a rollover or transfer from another eligible retirement plan on the receipt of information necessary to enable the system to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

SOURCES: Laws, 2001, ch. 438, § 11; Laws, 2002, ch. 313, § 7; Laws, 2008, ch. 359, § 8, eff from and after July 1, 2008.

§ 21-29-317. Maximum annual retirement allowance.

(1)(a) Notwithstanding any provisions of Articles 1, 3 and 5 of this chapter to the contrary, the maximum annual retirement allowance attributable to the employer contributions payable by the system to a member under Article 1, 3 or 5 of this chapter shall be subject to the limitations set forth in Section 415 of the Internal Revenue Code and any regulations issued thereunder as applicable to governmental plans as the term is defined under Section 414(d) of the Internal Revenue Code.

(b) The Board of Trustees of the Public Employees' Retirement System is authorized to provide by rule or regulation for the payment of benefits as provided under Articles 1, 3 and 5 of this chapter to members or beneficiaries of a municipal employees retirement fund or disability and relief fund at a time and under circumstances not otherwise provided for in this chapter to the extent that the payment is required to maintain the municipal employees retirement fund or disability and relief fund as a qualified retirement plan for purposes of federal income tax laws.

(2) Notwithstanding any other provision of this plan, all distributions from this plan shall conform to the regulations issued under Section 401(a)(9) of the Internal Revenue Code, applicable to governmental plans, as defined in Section 414(d) of the Internal Revenue Code, including the incidental death benefit provisions of Section 401(a)(9)(G) of the Internal Revenue Code. Further, such regulations shall override any plan provision that is inconsistent with Section 401(a)(9) of the Internal Revenue Code.

(3) The actuarial assumptions used to convert a retirement allowance from the normal form of payment to an optional form of payment shall be an appendix to Article 7 of this chapter and subject to approval by the board of directors based upon certification by the actuary.

(4) Notwithstanding any other provision of this plan, the maximum compensation that can be considered for all plan purposes shall not be greater than that allowed under Section 401(a)(17) of the Internal Revenue Code.

(5) In the event of the termination of one or more of the retirement plans established pursuant to Article 1, 3 or 5 of this chapter, all members of the plan or system as of the date of termination of the system shall be deemed to have a vested right to benefits to the extent and in the same manner that rights would be vested under the laws existing as of the date of termination of the system; however, any member, who because of a termination of the system has not fulfilled the requirements for length of service, shall be entitled to compensation as of the date that such member would otherwise be eligible, with such compensation to be computed on the basis of time actually a member of the service and compensation actually earned during the time a member, in the manner now provided by law.

SOURCES: Laws, 1992, ch. 576 § 10; Laws, 1995, ch. 624, § 11; Laws, 2001, ch. 438, § 12; Laws, 2002, ch. 627, § 21; Laws, 2007, ch. 348, § 4, eff from and after July 1, 2007.

Federal Aspects — Sections 401, 414, and 415 of the Internal Revenue Code, see 26 USCS §§ 401, 414, 415.

§ 21-29-319. Employment-related fringe benefits.

Deductions made prior to retirement by the employer for employment-related fringe benefits may continue to be paid after retirement in accordance with rules and regulations established by the board of trustees if the retirement allowance payable under Section 21-29-1 et seq., Section 21-29-101 et seq., and Section 21-29-201 et seq., is in an amount sufficient to cover the deductions.

SOURCES: Laws, 1996, ch. 472, § 8, eff from and after passage (approved April 5, 1996).

§ 21-29-321. Determination of average monthly base salary and longevity pay.

For purposes of determining the "average monthly base salary and longevity pay" as provided in Sections 21-29-101 et seq., the wages to be considered shall be the average base salary and longevity pay which was received in consecutive pay periods immediately preceding retirement. This amount shall be the average of six (6) pay periods if the employee was paid monthly, or the equivalent if the pay periods are bi-weekly, semi-monthly or weekly. In addition, wages may include holiday pay and regularly scheduled overtime pay earned for services performed during the last six (6) months of employment, as certified by the employer.

SOURCES: Laws, 1996, ch. 472 § 9; eff from and after passage (approved April 5, 1996).

§ 21-29-323. Determination of amount of death benefits to be paid to or for benefit of dependent children.

Monthly benefits payable to a spouse in the event of the death of a member before retirement or a retiree after retirement shall be divided and paid to or for the benefit of any dependent children of the deceased member or retiree in an amount equal to ten percent (10%) of the annual benefit payable to one (1) dependent child, twenty percent (20%) for two (2) dependent children, and thirty percent (30%) to three (3) or more dependent children. If there are more than three (3) dependent children, upon a child ceasing to be a dependent, his annuity shall terminate and there shall be a redetermination of the amounts payable to any remaining dependent children. Such benefits shall be paid to a surviving parent or lawful custodian of such children for the use and benefit of the children without the necessity of appointment of guardian. The remaining amount shall be paid to the spouse as otherwise provided.

SOURCES: Laws, 1999, ch. 544, § 14; Laws, 2002, ch. 627, § 22, eff from and after July 1, 2002.

§ 21-29-325. Payment of retirement benefits by means of direct deposit.

The Public Employees' Retirement System shall make payments of retirement benefits under this chapter to members who retire effective on or after January 1, 2003, and to the beneficiaries of those members, by means of direct deposit to an account with a financial institution that is a participant of the

Automated Clearing House designated by the member or beneficiary, unless the member or beneficiary can demonstrate that payment by means of direct deposit will cause the member or beneficiary undue hardship.

SOURCES: Laws, 2002, ch. 627, § 4, eff from and after July 1, 2002.

§ 21-29-327. Board of Trustees of Public Employees' Retirement System authorized to assess interest and bring suit on delinquent payments from municipalities whose retirement funds it administers.

Any municipality that has established a retirement fund or disability and relief fund under Articles 1, 3 and 5 of this chapter shall be assessed interest on delinquent payments as determined by the Board of Trustees of the Public Employees' Retirement System in accordance with rules and regulations adopted by the board of trustees. Any delinquent payments, assessed interest and any other amount certified by the board of trustees as owed by the municipality may be recovered by action in a court of competent jurisdiction against the municipality or may, upon due certification of delinquency and at the request of the board of trustees, be deducted from any other monies payable to the municipality by any department or agency of the state.

SOURCES: Laws, 2004, ch. 561, § 1, eff from and after passage (approved May 14, 2004.)

§ 21-29-329. Municipalities may adopt resolutions allowing spouses receiving retirement benefits to continue to receive spouse benefits for life, even after remarriage.

(1) Any municipality that has established a retirement fund or disability and relief fund under the provisions of Article 1, 3 or 5 of this chapter, shall be authorized to adopt a resolution to allow those spouses who are receiving retirement benefits under the provisions of those articles, to continue to receive the spouse retirement benefits for life even if the spouse remarries. The resolution also may provide that surviving spouses of deceased members who received spouse retirement benefits that were terminated upon remarriage may again receive the spouse retirement benefits from and after making application with the Board of Trustees of the Public Employees' Retirement System to reinstate the benefits. Any reinstatement of spouse retirement benefits shall be prospective only from and after the first of the month following the date of application for reinstatement.

(2) The continuation or reinstatement of spouse retirement benefits authorized under this section shall not be continued or reinstated unless all of the following requirements are met:

(a) The municipal retirement fund or disability and relief fund is actuarially sound, as shown by the most recent actuarial study required by Section 21-29-27, 21-29-119 or 21-29-221;

(b) The municipal retirement fund or disability and relief fund will remain actuarially sound if the spouse retirement benefits are continued or reinstated, as shown by a certified statement from the actuarial firm that prepared the most recent actuarial study;

(c) The governing authorities of the municipality adopt a resolution requesting the continuation or reinstatement of the spouse retirement benefits as authorized in this section and transmit the resolution to the Board of Trustees of the Public Employees' Retirement System; and

(d) If applicable, the surviving spouse makes an application to the Board of Trustees of the Public Employees' Retirement System to reinstate the spouse retirement benefits.

SOURCES: Laws, 2004, ch. 561, § 2, eff from and after July 1, 2004.

§ 21-29-331. Persons to whom benefits payable in event of death or disqualification of designated beneficiary.

(1) Except as otherwise provided in subsection (2) of this section, where benefits are payable to a designated beneficiary or beneficiaries under Article 1, 3 or 5 of this chapter and the designated beneficiary or beneficiaries as provided by the member on the most recent form filed with the system is deceased or otherwise disqualified at the time such benefits become payable, the following persons, in descending order of precedence, shall be eligible to receive such benefits:

(a) The surviving spouse of the member or retiree;

(b) The children of the member or retiree or their descendants, per stirpes;

(c) The brothers and sisters of the member or retiree or their descendants, per stirpes;

(d) The parents of the member or retiree;

(e) The executor or administrator on behalf of the member or retiree's estate;

(f) The persons entitled by law to distribution of the member or retiree's estate.

(2) Any monthly benefits payable to a beneficiary who dies prior to cashing his or her final check(s) and/or any additional benefits payable pursuant to a cost-of-living adjustment still payable at the death of a beneficiary receiving monthly benefits shall be paid as follows:

(a) The surviving spouse of the beneficiary;

(b) The children of the beneficiary or their descendants, per stirpes;

(c) The brothers and sisters of the beneficiary or their descendants, per stirpes;

(d) The parents of the beneficiary;

(e) The executor or administrator on behalf of the beneficiary's estate;

(f) The persons entitled by law to distribution of the beneficiary's estate.

(3) In the event no claim is made by any individual listed in subsection (2) of this section, a distribution may be made pursuant to the provisions of subsection (1) of this section.

(4) Payment under the provisions of this section shall bar recovery by any other person of the benefits distributed. Payment of benefits made to one or more members of a class of individuals are made on behalf of all members of the class. Any members of the class coming forward after payment is made must look to those who received the payment.

SOURCES: Laws, 2010, ch. 528, § 13, eff from and after July 1, 2010.

§ 21-29-333. Waiver of benefits from the general municipal retirement system or firemen's and policemen's disability and relief fund.

(1) A retiree or beneficiary may, on a form prescribed by and filed with the Executive Director of the Public Employees' Retirement System, irrevocably waive all or a portion of any benefits from the general municipal retirement system or a firemen's and policemen's disability and relief fund to which the retiree or beneficiary is entitled. The waiver shall be binding on the heirs and assigns of any retiree or beneficiary and the same must agree to forever hold harmless the fund and the Public Employees' Retirement System of Mississippi from any claim to the waived retirement benefits.

(2) Any waiver under this section shall apply only to the person executing the waiver. A beneficiary shall be entitled to benefits according to the option selected by the member at the time of retirement. However, a beneficiary may, at the option of the beneficiary, execute a waiver of benefits under this subsection.

(3) The fund shall retain all amounts that are not used to pay benefits because of a waiver executed under this subsection.

(4) The Board of Trustees of the Public Employees' Retirement System may provide rules and regulations for the administration of waivers under this section.

SOURCES: Laws, 2010, ch. 528, § 14, eff from and after July 1, 2010.

CHAPTER 31

Civil Service

General Provisions 21-31-1
Civil Service System in Certain Other Municipalities 21-31-51

GENERAL PROVISIONS

Sec.
21-31-1. Adoption of civil service system mandated in certain municipalities.
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21-31-9. Duties of the commission.
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21-31-19. Appointments and lay-offs.
21-31-21. Tenure of office and grounds for discipline.
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21-31-25. Fixing of rate of compensation.
21-31-27. Political services and contributions.

§ 21-31-1. Adoption of civil service system mandated in certain municipalities.

(1) A civil service commission is created in every municipality described in subsection (2) which has a full paid fire and police department.

(2) The provisions of subsection (1) of this section shall apply to:

(a) Any municipality, operating under a commission form of government, and having a population of not less than fourteen thousand (14,000), according to the federal census of 1940;

(b) Any municipality, under whatever form of government, having a population of not less than twenty-four thousand (24,000), according to the federal census of 1940, and situated in counties having a national military park;

(c) Any municipality, operating under the commission form of government, and having a population of not less than ten thousand five hundred (10,500) nor more than eleven thousand (11,000), according to the federal census of 1950;

(d) Any municipality, having an aldermanic commission or city manager form of government, and having a population of not less than three thousand eight hundred eighty-one (3,881) at the 1960 federal census, and situated on the Mississippi Gulf Coast;

(e) Any municipality with its corporate limits being bounded on one (1) side by the Mississippi River and being located in a county having an assessed valuation in excess of Forty Million Dollars ($40,000,000.00) but less than Fifty Million Dollars ($50,000,000.00) and having a total population in excess of thirty-seven thousand five hundred (37,500), according to the latest federal census;

(f) Any municipality, operating under special charter, and in which there is located a state-supported college for women;

(g) Any municipality having a population of more than ten thousand (10,000) according to the federal census of 1970, which is located within a Class 1 county in which U.S. Highway 51 and U.S. Highway 98 intersect and bounded on the south by the State of Louisiana; and

(h) Any municipality, bordering on the Escatawpa River, having an aldermanic commission form of government and having a population of not less than seventeen thousand eight hundred thirty-seven (17,837) according to the 1990 federal census.

SOURCES: Codes, 1942, §§ 3825-01, 3825-02; Laws, 1944, ch. 208, § 1; Laws, 1956, ch. 398; Laws, 1962, ch. 547, § 1; Laws, 1964, ch. 507, § 1; Laws, 1968, ch. 557, § 1; Laws, 1973, ch. 308, § 1; Laws, 1980, ch. 378; Laws, 1999, ch. 354, § 1, eff from and after July 1, 1999.

Cross References — Powers and duties of council under commission form of government, see § 21-5-9.

Applicability of civil service laws to mayor-council form of government, see § 21-8-33.

Applicability of civil service laws to council-manager plan of government, see § 21-9-79.

Creation of civil service system in municipalities of greater population, see § 21-31-51.

Extension of civil service system to municipality having port of entry, see § 21-31-3.

Appointment, removal, qualifications and term of office of commissioners, see § 21-31-5.

Duties of the commission, see § 21-31-9.

Accommodations, supplies and clerical aid to be furnished to commission, see § 21-31-11.

Civil service system's coverage, see § 21-31-13.

Adoption and induction of incumbents into civil service, see § 21-31-17.

Tenure of office and grounds for discipline, see § 21-31-21.

Removal, suspension, demotion, and discharge, see § 21-31-23.

Fixing of rate of compensation, see § 21-31-25.

Adoption of a civil service system in certain other municipalities, see §§ 21-31-51 et seq.

Statewide personnel system, see §§ 25-9-101 et seq.

JUDICIAL DECISIONS

1. In general.

Civil Service system established by §§ 21-31-1 to 21-31-27 is mandatory only for fire and police departments of municipalities designated in § 21-31-1; civil service system established by §§ 21-31-51 to 21-31-75 is mandatory as to all administrative and other employees employed on monthly basis by municipalities designated in § 21-31-51. City of Laurel v. Samuels, 469 So. 2d 530 (Miss. 1985).

Ordinance requiring all municipal employees qualified under the rules and regulations of the civil service commission to maintain their domicil and principal place of business within the corporate limits of the city during the period of their employment did not infringe their constitutional right to intrastate travel, and the city was not required to justify the ordinance under the compelling interest standard which must be met upon interference with a right to travel interstate; dismissal of the action affirmed. Wright v. City of Jackson, 506 F.2d 900 (5th Cir. 1975).

Where a captain of a fire department brought suit against the city to enjoin the city officials from transferring him to another fire station, the fire captain's remedy was under the Civil Service Act which provides a plain, speedy, adequate and complete remedy by appeal and the fire captain was not entitled to relief in equity. Scott v. Lowe, 223 Miss. 312, 78 So. 2d 452 (1955).

The Civil Service Act created new rights, which were unknown to the common law and it prescribed an exclusive remedy to persons asserting a civil service status. Scott v. Lowe, 223 Miss. 312, 78 So. 2d 452 (1955).

The civil service commission created hereby is an agency of the municipality it serves for enforcing the civil service requirements of the statute. McLeod v. Civil Serv. Comm'n, 198 Miss. 721, 21 So. 2d 916 (1945), overruled on other grounds, Meridan v. Davidson, 211 Miss. 683, 53 So. 2d 48 (1951).

ATTORNEY GENERAL OPINIONS

All full paid employees of the fire and/or police departments of each municipality are afforded civil service coverage, and "all full paid employees" means that coverage is only extended to employees who are paid a weekly, monthly, or yearly salary and does not include persons working for the municipality who are paid by the hour. Brown, June 26, 1992, A.G. Op. #92-0456.

Since civil service commission was established by the Legislature, only act by that body can authorize dissolution of commission, even if provisions of paragraph (2)(e) no longer accurately describe city. Brown, Oct. 21, 1992, A.G. Op. #92-0754.

As for Miss. Code Sections 21-31-1 et seq., there are no provisions that grant civil service commission autonomous power to appoint or employ civil service employees independently of mayor and board of aldermen. Seibert, Jan. 20, 1993, A.G. Op. #92-1012.

Firemen for city are covered by Civil Service System established pursuant to Miss. Code Sections 21-31-1 et seq. Schissel, Feb. 25, 1993, A.G. Op. #93-0089.

Only full paid employees of the fire and police departments are mandatorily included within civil service coverage, but other full time employees may be extended coverage in the discretion of the governing authorities with the approval of the Civil Service Commission upon adoption of a proper ordinance. Stafford, March 27, 1998, A.G. Op. #98-0160.

There is no authority for the civil service commission to conduct an investigation on its own motion which may result in the termination, demotion, or similar adverse effect on an employee absent any written complaint filed with the commission; it would appear contrary to the aim of the civil service statutes and to the functions and purposes of the commission for the commission itself to initiate investigations of employment decisions which could ultimately result in terminations or demotions of employees currently holding positions which are afforded the protections of the civil service system. Perkins, June 26, 1998, A.G. Op. #98-0274.

A municipal civil service commission would have no authority with regard to benefits to be provided to municipal employees by the governing authority. Bowman, Feb. 7, 2003, A.G. Op. #03-0771.

The Chief of Police must be included in the civil service system of the city of Ocean Springs because the more specific provisions of Miss. Code Ann. § 21-31-13, concerning civil service systems in a handful of described municipalities, control over the more general provisions of Miss. Code Ann. § 21-3-3, which applies to all code charter municipalities in Mississippi. Edwards, March 30, 2007, A.G. Op. #07-00152, 2007 Miss. AG LEXIS 134.

RESEARCH REFERENCES

Am Jur. 15A Am. Jur. 2d, Civil Service §§ 1 et seq.

§ 21-31-3. Adoption of civil service system authorized in certain municipalities.

The governing authorities of any municipality in which there is located a port of entry, in any county which has created a county port authority, may, in their discretion and by ordinance, extend the provisions of Sections 21-31-1 through 21-31-27 to all full-paid employees in all departments of such municipality.

SOURCES: Codes, 1942, § 3825-15; Laws, 1958, ch. 514.

Cross References — Appointment, removal, qualifications, and term of office of civil service commissioners, see § 21-31-5.

§ 21-31-5. Appointment and removal, qualifications, and term of office of commissioners.

(1)(a) The members of the civil service commission shall be appointed by the city commission, shall be three (3) in number, and shall serve without compensation; however, the governing authorities of any municipality, in their discretion, may pay each of the members of the commission a sum not to exceed One Hundred Dollars ($100.00) per month to compensate them for their services. No person shall be appointed a member of such commission who is not a citizen of the United States, a resident of such city for at least five (5) years immediately preceding such appointment, and an elector of the county wherein he resides. The terms of office of such commissioners shall be for six (6) years, except that the first three (3) members shall be appointed for different terms, as follows: One (1) shall serve a period of two (2) years, one (1) shall serve a period of four (4) years, and one (1) shall serve a period of six (6) years.

(b) From and after May 18, 1988, the governing authorities of any municipality organized under the provisions of Chapter 8, Title 21, Mississippi Code of 1972, in which a civil service commission is created pursuant to Sections 21-31-1 through 21-31-27, may increase the members of the commission to the same number of wards into which the municipality is divided and, if the commission is so expanded, the governing authorities shall appoint one (1) member of the commission from each ward. The commissioners shall serve without compensation; however, the governing authorities of any municipality, in their discretion, may pay each of the members of the commission a sum not to exceed One Hundred Dollars ($100.00) per month to compensate them for their services. No person shall be appointed a member of such commission who is not a citizen of the United States, a resident of the municipality for at least five (5) years immediately preceding such appointment, and an elector of the county wherein he resides. When making initial appointments under this paragraph (b), the governing authorities may stagger the terms of such appointees provided that no initial appointment is made for a period of less than one (1) year nor more than six (6) years; thereafter, all appointments shall be for terms of six (6) years. Appointment of members of the commission by the governing authorities under this paragraph (b) shall be made by the mayor with the confirmation of an affirmative vote of a majority of the city council present and voting at any meeting.

(2) Any member of such commission may be removed from office for incompetency, incompatibility, dereliction of duty, or other good cause, by the appointing power. However, no member shall be removed until charges have been preferred in writing and a full hearing had before the appointing power. Any member being so removed shall have the right of appeal, any time within thirty (30) days thereafter, to the circuit court and may demand a jury trial; such trial shall be confined to the determination of whether the order of removal, made by the appointing power, was, or was not, made in good faith and for cause.

(3) A majority of the members of the commission shall constitute a quorum.

SOURCES: Codes, 1942, § 3825-02; Laws, 1944, ch. 208, § 1; Laws, 1964, ch. 507, § 1; Laws, 1968, ch. 557, § 1; Laws, 1988, ch. 535, § 1, eff from and after passage (approved May 18, 1988).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (2). The word "incompatability" was changed to "incompatibility". The Joint Committee ratified the correction at its December 3, 1996 meeting.

Cross References — Creation of civil service commission under mayor-council form of government, see § 21-8-33.

Mandatory adoption of civil service system, see § 21-31-1.

Duties of the civil service commission, see § 21-31-9.

Civil service system's coverage, see § 21-31-13.

Appointment, removal, qualification and term of office of commissioners in certain other municipalities, see § 21-31-53.

Members of state personnel board, see § 25-9-109.

ATTORNEY GENERAL OPINIONS

Members of Commission must be present and hear evidence in public hearing in order to take official action and regulation which allows Commission to delegate matter to panel with less than quorum for investigation or official action would be inconsistent with statutory scheme set forth in Section 21-31-1 et seq. Bardwell, March 9, 1994, A.G. Op. #94-0121.

RESEARCH REFERENCES

Am Jur. 15A Am. Jur. 2d, Civil Service § 8.

§ 21-31-7. Election of officers and meetings of commission; secretary; board of examiners.

Immediately after the appointment of the civil service commission, the commission shall organize by electing one (1) of its members chairman. The commission shall hold regular meetings at least once each month, and such additional meetings as may be required for the proper discharge of its duties.

The commission shall appoint a secretary and a board of examiners, which board shall consist of the fire chief (or a person designated by the fire chief from the fire department to serve in his absence), the police chief (or a person designated by the police chief from the police department to serve in his absence), and a third member to be named by the commission, all of whom shall serve without compensation. The secretary shall keep the records and preserve all reports made to the commission, and also a record of all examinations held under the direction of the board of examiners, and perform such other duties as the commission may prescribe. The members of the board and the secretary are subject to suspension and discharge in the same manner as the commissioners.

SOURCES: Codes, 1942, § 3825-05; Laws, 1944, ch. 208, § 4; Laws, 1994, ch. 549, § 1, eff from and after July 1, 1994.

Cross References — Time for filing a petition for a writ of certiorari to the circuit court for review of a decision of a municipal civil service commission, see § 11-51-95.

Appointment, removal, qualifications, and term of office of civil service commissioners, see § 21-31-5.

Furnishing of accommodations, supplies and clerical aid, see § 21-31-11.

Qualification of applicants, see § 21-31-15.

Adoption and induction of incumbent policemen and firemen into civil service, see § 21-31-17.

Appointments and layoffs in police and fire departments, see § 21-31-19.

Election of officers and meetings of commission in certain other municipalities, see § 21-31-55.

ATTORNEY GENERAL OPINIONS

A mayor and board of aldermen may not enact personnel policies which would interfere with a board of examiners as a three person body to direct the conduct of employment or promotional examinations. Brown, July 29, 2005, A.G. Op. 05-0352.

Any regulation or rule taking away the authority of two members of board of examiners would be contrary to the provisions of Section 21-3-7. Brown, July 29, 2005, A.G. Op. 05-0352.

RESEARCH REFERENCES

Am Jur. 15A Am. Jur. 2d, Civil Service §§ 8, 23 et seq.

§ 21-31-9. Duties of the commission.

It shall be the duty of the civil service commission to make suitable rules and regulations not inconsistent with the provisions of Sections 21-31-1 through 21-31-27. Such rules and regulations shall provide in detail the manner of conducting examinations, appointments, promotions, transfers, reinstatements, demotions, suspensions and discharges, and may also provide for any other matter connected with the general subject of personnel administration, and which may be considered desirable to further carry out the general purposes of Sections 21-31-1 through 21-31-27. It shall have the power to conduct investigations, and make reports on all matters touching the enforcement and effect of the provisions of Sections 21-31-1 through 21-31-27, and the rules and regulations prescribed hereunder. The commission shall have the power to investigate all complaints which must be reduced to writing, subpoena witnesses, administer oaths, and conduct hearings.

SOURCES: Codes, 1942, § 3825-06; Laws, 1944, ch. 208, § 5.

Cross References — Time for filing a petition for a writ of certiorari to the circuit court for review of a decision of a municipal civil service commission, see § 11-51-95.

Appointment, removal, qualifications, and term of office of civil service commissioners, see § 21-31-5.

Appointments and layoffs in police and fire departments, see § 21-31-19.

Employee's tenure of office and grounds for discipline, see § 21-31-21.

Removal, suspension, demotion, or discharge of an employee, see § 21-31-23.

Fixing rate of compensation, see § 21-31-25.

Duties of commission in certain other municipalities, see § 21-31-57.

ATTORNEY GENERAL OPINIONS

The power of the Civil Service Commission to enact rules under Section 21-31-9 is not expressly subject to the same restrictive language found in Section 21-31-57, requiring that all rules of the Civil Service Commission be consistent with personnel rules adopted by the governing authorities of the municipality; however, the 1994 Amendment to Section 21-31-57 merely made explicit what was already implicit in municipal law, and the detailed rules of any civil service commission may not be inconsistent with the general rules and regulations adopted by the governing authorities. Bowman, March 17, 2000, A.G. Op. #2000-0118.

The civil service commission is entitled to obtain any records which relate to the fairness and impartiality of an employment or personnel decision of the governing authorities, but the commission is not entitled to go on a "fishing expedition" and obtain records which are not related to cases properly before the commission and records which are exempt from the Public Records Act by statute. Alexander, Sept. 26, 2003, A.G. Op. 03-0523.

A mayor and board of aldermen may not enact personnel policies which would interfere with a board of examiners as a three person body to direct the conduct of employment or promotional examinations. Brown, July 29, 2005, A.G. Op. 05-0352.

Any regulation or rule taking away the authority of two members of board of examiners would be contrary to the provisions of Section 21-3-7. Brown, July 29, 2005, A.G. Op. 05-0352.

The city manager holds the authority to set and approve minimum job qualifications, requirements and job descriptions for municipal jobs other than those created by the council under Miss. Code Ann. § 21-9-45. A city manager may reject a job candidate list and form a new one using new job requirements, provided that the new job requirements are appropriate and consistent with state law, the proposed action does not violate the Civil Service Commission regulation, and the new list contains candidates that meet the criteria set forth by the Civil Service Commission. Tynes, March 9, 2007, A.G. Op. #07-00092, 2007 Miss. AG LEXIS 97.

RESEARCH REFERENCES

Am Jur. 15 Am. Jur. Legal Forms 2d, Public Officers, § 213:106 (claim for salary after illegal removal or suspension from office).

5A Am. Jur. Pl & Pr Forms (Rev), Civil Service, Forms 41 et seq. (public employee, recovery of salary after dismissal and reinstatement).

§ 21-31-11. Accommodations, supplies and clerical aid to be furnished to commission.

The duly constituted authorities of each and every city coming within the purview of Sections 21-31-1 through 21-31-27, shall provide the commission with suitable and convenient rooms and accommodations and cause the same to be furnished, heated and lighted and supplied with all office supplies and equipment necessary to carry on the business of the commission and with such clerical assistance as may be necessary, all of which is to be commensurate with the number of persons in each such city coming within the purview of Sections 21-31-1 through 21-31-27. The failure upon the part of the duly constituted authorities to do so shall be considered a violation of this section and shall be punishable as such.

SOURCES: Codes, 1942, § 3825-14; Laws, 1944, ch. 208, § 13.

Cross References — Accommodations, supplies, etc. to be furnished to commission in certain other municipalities, see § 21-31-59.

JUDICIAL DECISIONS

1. In general.

An ordinance under which licenses were granted to operate 10 additional taxicabs was improperly adopted as an emergency measure and declared to be immediately effective where, contrary to statutory requirements, there was no indication of how the immediate preservation of the public health, safety and general welfare of the city's citizens required the ordinance to take effect immediately and where no other good cause was set forth;

nor was there compliance with the statute requiring that ordinances granting any right to use the streets remain on file with the municipal clerk for two weeks before passage. Thus, the licenses at issue were a nullity. Yellow Cab Co. of Biloxi, Inc. v. City of Biloxi, 372 So. 2d 1274 (Miss. 1979).

ATTORNEY GENERAL OPINIONS

Hiring of legal clerk to provide clerical assistance to the civil service commission of a city would be authorized if the clerk does not provide legal representation to the civil service commission or its members and otherwise does not engage in the practice of law in any capacity, including providing legal analysis or the writing of briefs. Hilburn, Apr. 8, 2005, A.G. Op. 05-0154.

§ 21-31-13. Coverage afforded by civil service system.

The provisions of Sections 21-31-1 through 21-31-27 shall include all full paid employees of the fire and/or police departments of each municipality coming within its purview, including the chiefs of those departments. All appointments to and promotions in said departments shall be made solely on merit, efficiency, and fitness, which may be ascertained by open competitive examination and impartial investigation. No person shall be reinstated in, or transferred, suspended, or discharged from any place, position or employment contrary to the provisions of Sections 21-31-1 through 21-31-27. The governing authorities of the municipality may, with the approval of the civil service commission, extend the benefits of Sections 21-31-1 through 21-31-27 to other full time employees of the municipality.

All incumbents and future appointees shall be subject to civil service, except, however, those appointees now and hereafter serving as extra members.

SOURCES: Codes, 1942, §§ 3825-03, 3825-04; Laws, 1944, ch. 208, § 2; Laws, 1962, ch. 547, § 2, eff from and after passage (approved April 30, 1962).

Cross References — Employee's tenure of office, and grounds for discipline, see § 21-31-21.

Removal, suspension, demotion, or discharge of an employee, see § 21-31-23.

Coverage afforded by civil service system in certain other municipalities, see 21-31-61.

Nonstate service employees excluded from the state service, see § 25-9-107.

JUDICIAL DECISIONS

1. In general.

There are two separate civil service systems: one system applies only to full paid employees of fire and police departments, and other system applies only to administrative and other municipal employees on monthly salary. Bullock v. Mississippi Emp. Sec. Comm'n, 697 So. 2d 1147 (Miss. 1997), reh'g denied, 697 So. 2d 1191 (Miss. 1997).

City's fire chief could appoint supervisory personnel above district fire chief level under civil service statute without open and competitive examination and impartial investigation, where city's civil service commission and mayor would still have to approve appointees, and commission would have option of opening noncompetitive appointment to include other eligible candidates. Chandler v. City of

Jackson Civil Serv. Comm'n, 687 So. 2d 142 (Miss. 1997).

Civil service statutes were enacted to afford state and municipal employees with reasonable job security by protecting them from political considerations and partisanship. Chandler v. City of Jackson Civil Serv. Comm'n, 687 So. 2d 142 (Miss. 1997).

A 16-year veteran police officer, who had vested permanent employment rights under the civil service laws, resigned on his own volition and was not "constructively discharged" where he obtained legal counsel when he became aware that he was the object of an investigation and resigned his job on his attorney's advice. Thus, he could not thereafter pursue an untimely claim that he was denied procedural due process. In order to ensure that a civil service employee preserves his or her procedural due process guarantees, he or she should "stay the course" and remain with the job until relieved from the assignment by an official with statutory authority to fire. While the work environment could become the source of some irritation or embarrassment, such embarrassment will usually afford the civil servant nothing in the way of a procedural due process claim after a voluntary resignation. The instances will be few when a claim of constructive discharge will preserve procedural guarantees that the employee has waived by resigning. The wisdom of "staying the course" is especially crucial in light of state law which deems civil service administrative remedies as the exclusive remedy before relief can be sought in state court. Bulloch v. City of Pascagoula, 574 So. 2d 637 (Miss. 1990).

ATTORNEY GENERAL OPINIONS

Civil Service System established by Section 21-31-1 et seq. is mandatory only for fire and police departments of municipalities designated in statute; however, municipalities have option of extending civil service coverage to all full time employees; if city extends civil service protection to all full time employees municipal personnel matters fall squarely under provisions of statutes and cases governing civil service coverage and protection and employee who has coverage under civil service laws is limited to exclusive remedy provided by civil service laws. Bardwell, Dec. 15, 1993, A.G. Op. #93-0877.

Firefighter who filled position on temporary basis was not automatically entitled to promotion to fill vacancy on permanent basis based on length of time he filled temporary position. Schissel, Feb. 24, 1994, A.G. Op. #94-0044.

Only full paid employees of the fire and police departments are mandatorily included within civil service coverage, but other full time employees may be extended coverage in the discretion of the governing authorities with the approval of the Civil Service Commission upon adoption of a proper ordinance. Stafford, March 27, 1998, A.G. Op. #98-0160.

Where the governing authorities and the civil service commission cannot agree on the scope of coverage for full-time positions (other than those mandated by statute), the initial determination of which full-time positions should be included or excluded from civil service coverage is within the discretionary authority of the municipal governing authorities, consistent with the provisions of § 21-31-1 et seq. and the statutes governing code-charter municipalities; thus, the governing authorities of a city as a matter of policy may determine that certain full-time positions within the municipal government should fall within coverage of the civil service system, and may also determine that other positions are best left subject to the general statutory provisions governing appointed employees in code-charter municipalities. Jordan, April 3, 1998, A.G. Op. #98-0081.

The Chief of Police must be included in the civil service system of the city of Ocean Springs because the more specific provisions of Miss. Code Ann. § 21-31-13, concerning civil service systems in a handful of described municipalities, control over the more general provisions of Miss. Code Ann. § 21-3-3, which applies to all code charter municipalities in Mississippi. Edwards, March 30, 2007, A.G. Op. #07-00152, 2007 Miss. AG LEXIS 134.

RESEARCH REFERENCES

Am Jur. 15A Am. Jur. 2d, Civil Service §§ 23 et seq.

5A Am. Jur. Pl & Pr Forms (Rev), Civil Service, Form 3.4 (complaint, petition, or declaration — declaratory relief and injunction — proper qualifications for promotions within police force).

8 Am. Jur. Pl & Pr Forms (Rev), Declaratory Judgments, Form 4.3 (complaint, petition, or declaration — to determine validity of promotion procedure within police department).

§ 21-31-15. Qualifications of applicants seeking civil service position.

All applicants for a position of any kind under civil service must be a citizen of the United States and an elector of the county in which he resides and must meet only such bona fide occupational residency requirements as may be determined by the municipal board of civil service commissions or the governing authority of the municipality.

SOURCES: Codes, 1942, § 3825-09; Laws, 1944, ch. 208, § 8; Laws, 1979, ch. 322, eff from and after passage (approved March 1, 1979).

Cross References — Qualifications of applicants seeking civil service position in certain other municipalities, see § 21-31-63.

JUDICIAL DECISIONS

1. In general.

A city ordinance which required members of fire and police departments and other civil service employees to maintain their domicile and place of residence within the corporate limits of the city, was not in conflict with a state statute requiring civil service applicants to be citizens of the United States and electors of the county in which they reside, with 3 years' residence, but was instead an additional regulation within the power of municipalities operating under the commission form of government by virtue of statutes authorizing such municipalities to make necessary rules and regulations for the government of the officers and employees of the city and for the efficient and economical conduct of the city's business. Hattiesburg Firefighters Local 184 v. City of Hattiesburg, 263 So. 2d 767 (Miss. 1972).

RESEARCH REFERENCES

Am Jur. 15A Am. Jur. 2d, Civil Service § 24, 25, 32.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 242-244.

5A Am. Jur. Pl & Pr Forms (Rev), Civil Service, Form 4 (public employee, compelling placement on promotion list).

CJS. 62 C.J.S., Municipal Corporations §§ 571, 783-785 et seq.

§ 21-31-17. Adoption and induction of incumbents into civil service.

For the benefit of the public service and to prevent delay, injury, or interruption therein by reason of the enactment of Sections 21-31-1 through

21-31-27, all persons holding a position in the fire and/or police departments, including the chief thereof, of any such municipality coming under the provisions of Sections 21-31-1 through 21-31-27, who shall have served continuously in such positions for a period of at least the preceding six months, are hereby declared eligible for permanent appointment under civil service to the offices, positions or employments which they shall then hold, respectively, without examination or other act on their part, and not on probation, and every such person is hereby automatically adopted and inducted permanently into civil service, into such office, place, position or employment which such person then holds as completely and effectually to all intents and purposes as if such person had been permanently appointed thereto under civil service after examination and investigation. However, those persons who have previously left their positions to participate in the armed forces of the United States shall have preference in reemployment and enjoy the rights and privileges of Sections 21-31-1 through 21-31-27 as if their services had not been terminated.

SOURCES: Codes, 1942, § 3825-08; Laws, 1944, ch. 208, § 7.

Cross References — Adoption and induction of incumbents into civil service in certain other municipalities, see § 21-31-65.

Veterans' preference in appointments by state personnel board, see §§ 25-9-301 through 25-9-305.

JUDICIAL DECISIONS

1. In general.

A 16-year veteran police officer, who had vested permanent employment rights under the civil service laws, resigned on his own volition and was not "constructively discharged" where he obtained legal counsel when he became aware that he was the object of an investigation and resigned his job on his attorney's advice. Thus, he could not thereafter pursue an untimely claim that he was denied procedural due process. In order to ensure that a civil service employee preserves his or her procedural due process guarantees, he or she should "stay the course" and remain with the job until relieved from the assignment by an official with statutory authority to fire. While the work environment could become the source of some irritation or embarrassment, such embarrassment will usually afford the civil servant nothing in the way of a procedural due process claim after a voluntary resignation. The instances will be few when a claim of constructive discharge will preserve procedural guarantees that the employee has waived by resigning. The wisdom of "staying the course" is especially crucial in light of state law which deems civil service administrative remedies as the exclusive remedy before relief can be sought in state court. Bulloch v. City of Pascagoula, 574 So. 2d 637 (Miss. 1990).

RESEARCH REFERENCES

Am Jur. 15A Am. Jur. 2d, Civil Service §§ 26, 28.

§ 21-31-19. Appointments and lay-offs.

The civil service commission shall keep a list of all members of the said police and/or fire department, and formulate methods of determining the relative qualifications of persons seeking employment in either department, and give preference to those having the best qualifications. The commission shall provide that men laid off because of curtailment of expenditures, reduction in force, and like causes, shall be the last man or men, including probationers, that have been appointed to either the fire and/or police departments, until such reductions necessary shall have been accomplished. However, in the event said department shall again be increased in number, those suspended shall be reinstated before any new appointments shall be made.

SOURCES: Codes, 1942, § 3825-07; Laws, 1944, ch. 208, § 6.

Cross References — Appointments and lay-offs in certain other municipalities, see § 21-31-67.

JUDICIAL DECISIONS

1. In general.

Abolition of the position of assistant fire chief, while within the power of the mayor and commissioners, does not automatically remove the holder of that position from service in the city's fire department and, where his services have been satisfactory over a period of years, he is entitled to hold a newly created captaincy which includes the duties of assistant fire chief, and, if he does not desire that position, he can apply for another, his right to such other position to be determined by the mayor and commissioners giving due consideration to his and other municipal employees' seniority rights and length of service, which determination is subject to review by the civil service commission. City of Laurel v. Reddoch, 200 Miss. 259, 26 So. 2d 465 (1946).

RESEARCH REFERENCES

Am Jur. 15A Am. Jur. 2d, Civil Service §§ 26-30, 34, 58, 59, 65-67, 71, 83, 87, 88, 103, 104, 107.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 245.

CJS. 62 C.J.S., Municipal Corporations § 783-785 et seq.

§ 21-31-21. Tenure of office and grounds for discipline.

The tenure of everyone holding an office, place, position or employment under the provisions of Sections 21-31-1 through 21-31-27 shall be only during good behavior. Any such person may be removed or discharged, suspended without pay, demoted or reduced in rank, or deprived of vacation privileges or other special privileges, or any combination thereof, for any of the following reasons:

Incompetency, inefficiency, or inattention of duty; dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public or a fellow employee, or any other act of omission or commission tending to injure the public service.

SOURCES: Codes, 1942, § 3825-10; Laws, 1944, ch. 208, § 9; Laws, 1984, ch. 521, § 1, eff from and after July 1, 1984.

Cross References — No prejudice toward any employee for failure to engage in, or contribute to, any political activity, see § 21-31-27.

Tenure of office and grounds for discipline in certain other municipalities, see § 21-31-69.

JUDICIAL DECISIONS

1. In general.
2. Illustrative cases.

1. In general.

Employee's property interest in his employment was created by Miss. Code Ann. §§ 21-31-21 and 21-31-23, which provided that civil service employees could not be discharged except for cause; where he was given written notification of termination and told of the actions he could take if he disagreed with the termination, the employee was given the minimum due process required. Burleson v. Hancock County Sheriff's Dep't Civ. Serv. Comm'n, 872 So. 2d 43 (Miss. Ct. App. 2003), writ of certiorari denied by 873 So. 2d 1032, 2004 Miss. LEXIS 467 (Miss. 2004), writ of certiorari denied by 543 U.S. 1038, 125 S. Ct. 809, 160 L. Ed. 2d 605, 2004 U.S. LEXIS 8252, 73 U.S.L.W. 3354 (2004).

Discharge of clerical employee from constable's office, for expressing, in private conversation, hope that President would be assasinated violated employee's free speech rights under First Amendment; remark was overheard while employee was privately conversing with her co-employee boyfriend in office not generally accessible to public. Rankin v. McPherson, 483 U.S. 378, 107 S. Ct. 2891, 97 L. Ed. 2d 315 (1987), reh'g denied, 483 U.S. 1056, 108 S. Ct. 31, 97 L. Ed. 2d 819 (1987).

Statutory pretermination procedures for nonprobationary municipal civil service employees do not contain adequate due process safeguards to be followed when discharging, suspending, or demoting covered municipal employees, whose right of continued employment is a property right. Thus, risk reducing procedures must be accorded such employees, including pretermination written notice of the reasons for termination and an effective opportunity to rebut such reasons, the right to respond in writing to the charges made and to respond orally before the official charged with the responsibility of making the termination decision, a written decision on the response of the employee at the earliest practicable date, and, although not required, examination of witnesses, trial or hearing, in the discretion of the responsible official. Little v. City of Jackson, 375 So. 2d 1031 (Miss. 1979), cert. denied, 445 U.S. 933, 100 S. Ct. 1325, 63 L. Ed. 2d 768 (1980).

The right of a member of police and fire department to continue on his job and enjoy the retirement benefits, etc. , under civil service is a right protected by the courts to the extent of seeing to it that an action of a civil service commission in discharging such an employee is taken only in good faith and for a cause enumerated in the statute. City of Meridian v. Davidson, 211 Miss. 683, 53 So. 2d 48 (1951).

The grounds upon which policemen in a city operating under the commission form of government may be removed or discharged are set out in this section [Code 1942, § 3825-10]. City of Jackson v. McLeod, 199 Miss. 676, 24 So. 2d 319 (1946), cert. denied, 328 U.S. 863, 66 S. Ct. 1368, 90 L. Ed. 1633 (1946).

2. Illustrative cases.

Although a trial court had not erred when it held that a city was not liable for the acts of two police officers during and after an arrest of an African American male because the officers had acted beyond the scope of their employment, the court erred when it found the city liable because it had negligently supervised the officers. There was not a scintilla of evidence presented to indicate that the city had any policy which encouraged the type of activity that the officers engaged in and there was no factual support for the factual holding that the city was deliberately indifferent to the rights of African Americans. City of Jackson v. Powell, 917 So. 2d 59 (Miss. 2005).

ATTORNEY GENERAL OPINIONS

If city's civil service commission, by rule or regulation, provided procedure for covered positions to be changed to non-covered positions and that procedure was followed in enactment of 1985 amending ordinance in question, position of police chief would be an "at will" position. Perkins, March 17, 1994, A.G. Op. #94-0117.

RESEARCH REFERENCES

ALR. Pre-employment conduct as ground for discharge of civil service employee having permanent status. 4 A.L.R.3d 488.

First Amendment protection for publicly employed firefighters subjected to discharge, transfer, or discipline because of speech. 106 A.L.R. Fed. 396.

Am Jur. 15A Am. Jur. 2d, Civil Service §§ 43, 54, 58, 59, 65-68, 71, 73, 75..

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 250, 303 et seq.

CJS. 62 C.J.S., Municipal Corporations §§ 797-801, 846-849.

§ 21-31-23. Removal, suspension, demotion, and discharge.

No person in the classified civil service who shall have been permanently appointed or inducted into civil service under the provisions of Sections 21-31-1 through 21-31-27, except for such persons as may be employed to fill a vacancy caused by the absence of a fireman or policeman while in service as a member of the armed forces of the United States, shall be removed, suspended, demoted or discharged, or any combination thereof, except for cause, and only upon the written accusation of the appointing power or any citizen or taxpayer, a written statement of which accusation, in general terms, shall be served upon the accused, and a duplicate filed with the commission. The chiefs of the fire and/or police department may suspend a member pending the confirmation of the suspension by the regular appointing power, which shall be within three (3) days.

In the absence of extraordinary circumstances or situations, before any such employee may be removed or discharged, he shall be given written notice of the intended termination, which notice shall state the reasons for termination and inform the employee that he has the right to respond in writing to the reasons given for termination within a reasonable time and respond orally before the official charged with the responsibility of making the termination decision. Such official may, in his discretion, provide for a pretermination hearing and examination of witnesses, and if a hearing is to be held, the notice to the employee shall also set the time and place of such hearing. A duplicate of such notice shall be filed with the commission. After the employee has responded or has failed to respond within a reasonable time, the official charged with the responsibility of making the termination decision shall determine the appropriate disciplinary action, and shall notify the employee of his decision in writing at the earliest practicable date.

Where there are extraordinary circumstances or situations which require the immediate discharge or removal of an employee, such employee may be terminated without a pretermination hearing as required by this section, but such employee shall be given written notice of the specific reasons for termination within twenty-four (24) hours after the termination, and shall be given an opportunity for a hearing similar to the pretermination hearing provided in this section within twenty (20) days after the date of termination. For the purposes of this section, extraordinary situations or circumstances include, but are not limited to, circumstances where retention of the employee would result in damage to municipal property, would be detrimental to the interest of municipal government or would result in injury to the employee, to a fellow employee or to the general public.

Any person so removed, suspended, demoted, discharged or combination thereof may, within ten (10) days from the time of such disciplinary action, file with the commission a written demand for an investigation, whereupon the commission shall conduct such investigation. The investigation shall be confined to the determination of the question of whether such disciplinary action was or was not made for political or religious reasons and was or was not made in good faith for cause. After such investigation the commission may, if in its estimation the evidence is conclusive, affirm the disciplinary action, or if it shall find that the disciplinary action was made for political or religious reasons, or was not made in good faith for cause, shall order the immediate reinstatement or reemployment of such person in the office, place, position, or employment from which such person was removed, suspended, demoted, discharged or combination thereof, which reinstatement shall, if the commission so provides in its discretion, be retroactive, and entitle such person to pay or compensation from the time of such disciplinary action. The commission upon such investigation may, in lieu of affirming the disciplinary action, modify the order of removal, suspension, demotion, discharge or combination thereof by directing a suspension, without pay, for a given period and subsequent restoration of duty, or by directing a demotion in classification, grade or pay, or by any combination thereof. The findings of the commission shall be certified in writing to the appointing power, and shall be forthwith enforced by such officer.

All investigations made by the commission pursuant to the provisions of this section shall be by public hearing, after reasonable written notice to the accused of the time and place of such hearing, at which hearing the accused shall be afforded an opportunity of appearing in person and by counsel, and presenting his defense. The findings of the commission shall be conclusive and binding unless either the accused or the municipality shall, within thirty (30) days from the date of the entry of such judgment or order on the minutes of the commission and notification to the accused and the municipality, appeal to the circuit court of the county within which the municipality is located. Any appeal of the judgment or order of the commission shall not act as a supersedeas of such judgment or order, but the judgment or order shall remain in effect pending a final determination of the matter on appeal. Such appeal shall be taken by serving the commission and the appellee, within thirty (30) days after the entry of such judgment or order, a written notice of appeal, stating the grounds thereof, and demanding that a certified transcript of the record and of all papers on file in the office of the commission affecting or relating to such judgment or order, be filed by the commission with such court. The commission shall, within thirty (30) days after the filing of such notice, make, certify and file such transcript with such court. The said circuit court shall thereupon proceed to hear and determine such appeal. However, such hearing shall be confined to the determination of whether the judgment or order of removal, discharge, demotion, suspension or combination thereof made by the commission, was or was not made in good faith for cause, and no appeal to such court shall be taken except upon such ground or grounds.

SOURCES: Codes, 1942, § 3825-11; Laws, 1944, ch. 208, § 10; Laws, 1984, ch. 521, § 2, eff from and after July 1, 1984.

Cross References — Time for filing a petition for a writ of certiorari to the circuit court for review of a decision of a municipal civil service commission, see § 11-51-95.

Removal of public utility commissioner for cause, see § 21-27-15.

Political activity being cause for removal, see § 21-31-27.

Removal, suspension, demotion and discharge in certain other municipalities, see § 21-31-71.

Dismissal or demotion of employee engaging in political activities, see § 21-31-75.

Removal from office of park commissioners for cause, see § 21-37-33.

Penalties for wrongful actions in connection with claims, see §§ 21-39-15, 21-39-17.

JUDICIAL DECISIONS

1. In general.
2. Abolition of position.
3. Damages.
4. Judicial review.
5. Standard and scope of review.

1. In general.

Where plaintiff fireman alleged defendants, a city, its mayor, and an alderman, wrongfully demoted him in violation of his substantive due process rights, because Miss. Code Ann. § 21-31-23 created vested certain employment rights and there was no evidence the fireman was not vested, a substantive due process claim could proceed. Montgomery v. Mississippi, 498 F. Supp. 2d 892 (S.D. Miss. 2007).

Citizens had no standing to sue under Miss. Code Ann. § 21-31-23 as the citizens were not civil servants under this statutory scheme and had not been discharged from such a position. Aldridge v. West, 929 So. 2d 298 (Miss. 2006).

Because the employee did not request a hearing on his demotion and termination, making his transfer an issue, until March 15, 2000, more than 10 days after the transfer, the Hancock County Sheriff's Department's Civil Service Commission did not have to consider the issue. Burleson v. Hancock County Sheriff's Dep't Civ. Serv. Comm'n, 872 So. 2d 43 (Miss. Ct. App. 2003), writ of certiorari denied by 873 So. 2d 1032, 2004 Miss. LEXIS 467 (Miss. 2004), writ of certiorari denied by 543 U.S. 1038, 125 S. Ct. 809, 160 L. Ed. 2d 605, 2004 U.S. LEXIS 8252, 73 U.S.L.W. 3354 (2004).

Employee's property interest in his employment was created by Miss. Code Ann. §§ 21-31-21 and 21-31-23, which provided that civil service employees could not be discharged except for cause; where he was given written notification of termination and told of the actions he could take if he disagreed with the termination, the employee was given the minimum due process required. Burleson v. Hancock County Sheriff's Dep't Civ. Serv. Comm'n, 872 So. 2d 43 (Miss. Ct. App. 2003), writ of certiorari denied by 873 So. 2d 1032, 2004 Miss. LEXIS 467 (Miss. 2004), writ of certiorari denied by 543 U.S. 1038, 125 S. Ct. 809, 160 L. Ed. 2d 605, 2004 U.S. LEXIS 8252, 73 U.S.L.W. 3354 (2004).

A police officer's appeal should not have been dismissed for failure to request an administrative appeal with the city civil service commission within 10 days as required by § 21-31-23, where the officer's employment was terminated after the city manager stated in a letter that the officer could have a pretermination hearing and the officer's attorney then promptly requested such a hearing; the officer was misled and the city's conduct was a material factor in preventing the officer from complying with the statute, and therefore the city would be estopped from denying the officer a pretermination hearing. Watson v. City of Pascagoula, 577 So. 2d 1234 (Miss. 1991).

A 16-year veteran police officer, who had vested permanent employment rights under the civil service laws, resigned on his own volition and was not "constructively discharged" where he obtained legal counsel when he became aware that he was the object of an investigation and resigned his job on his attorney's advice. Thus, he could not thereafter pursue an untimely claim that he was denied procedural due process. In order to ensure that a civil service employee preserves his or her procedural due process guarantees, he or she should "stay the course" and remain with the job until relieved from the assignment by an official with statutory authority to fire. While the work environment could become the source of some irritation or embarrassment, such embarrassment will usually afford the civil servant nothing in the way of a procedural due process claim after a voluntary resignation. The instances will be few when a claim of constructive discharge will preserve procedural guarantees that the employee has waived by resigning. The wisdom of "staying the course" is especially crucial in light of state law which deems civil service administrative remedies as the exclusive remedy before relief can be sought in state court. Bulloch v. City of Pascagoula, 574 So. 2d 637 (Miss. 1990).

A fire chief's discharge of a fireman who struck another fireman while on duty was improper where it was not made on a written accusation of the city's mayor and board of aldermen, as required by this section. Eidt v. City of Natchez, 382 So. 2d 1093 (Miss. 1980).

This section provided the exclusive remedy for a city policeman who was dismissed from his job; since he did not proceed under it, the trial court had no jurisdiction to direct the city to reinstate him and reimburse him for back pay. City of Jackson v. Thomas, 331 So. 2d 926 (Miss. 1976).

Where an employee had turned in his fireman's cap upon being suspended for misconduct and was leaving the premises when a controversy arose between him and his superior, his acts and conduct in such controversy subsequent to his suspension by the fire chief were properly made a basis of a verdict against the employee, in view of the fact that he was not discharged by the city manager until two days thereafter. City of Meridian v. Davidson, 211 Miss. 683, 53 So. 2d 48 (1951).

A municipal council in employing and in discharging policemen and in prescribing rules and regulations for their conduct is acting in an executive or administrative capacity, and the civil service commission in its investigation under this act as the agent of a city is moving still within the ambit of an executive or administrative function. City of Jackson v. McLeod, 199 Miss. 676, 24 So. 2d 319 (1946), cert. denied, 328 U.S. 863, 66 S. Ct. 1368, 90 L. Ed. 1633 (1946).

Civil service commission of city makes "the city's final decision as to whether a policeman shall be discharged." City of Jackson v. McLeod, 199 Miss. 676, 24 So. 2d 319 (1946), cert. denied, 328 U.S. 863, 66 S. Ct. 1368, 90 L. Ed. 1633 (1946).

2. Abolition of position.

Evidence, including a showing that city pound keeper did not take orders from the police chief or anyone else in the police department, did not make a policeman's bond, was not a member of the Disability and Relief Fund for firemen and policemen, but on the contrary, was a member of the Mississippi Public Employees' Retirement System, amply supported Civil Service Commission's finding that pound keeper was not a member of the police department, and, therefore, was not entitled to other employment in the police department upon abolition of the office of pound keeper. City of Hattiesburg v. Jackson, 235 Miss. 109, 108 So. 2d 596 (1959).

Abolition of the position of assistant fire chief, while within the power of the mayor and commissioners, does not automatically remove the holder of that position from service in the city's fire department and, where his services have been satisfactory over a period of years, he is entitled to hold a newly created captaincy which includes the duties of assistant fire chief, and, if he does not desire that position, he can apply for another, his right to such other position to be determined by the mayor and commissioners giving due consideration to his and other municipal employees' seniority rights and length of service, which determination is subject to review by the Civil Service Commission. City of Laurel v. Reddoch, 200 Miss. 259, 26 So. 2d 465 (1946).

3. Damages.

Where the civil service commission ordered a city to reinstate a police officer immediately but not retroactively, the commission's denial of the officer's request for back pay was not an abuse of discretion because the delay in the adjudication of the civil service hearing was caused by the employee's actions and the employee had engaged in misconduct that was not serious enough to warrant termination. City of Laurel v. Brewer, 919 So. 2d 217 (Miss. Ct. App. 2005).

4. Judicial review.

In a case in which a city employee appealed the affirmation of a decision by a city civil service commission to suspend him for three days without pay for using profanity on a city radio, sufficient evidence was presented for the commission to find that it was the employee's inappropriate comment over a city radio, and not other factors such as disagreements with his supervisor, or his religious or political beliefs, that led to the suspension. Young v. City of Biloxi, 22 So. 3d 1269 (Miss. Ct. App. 2009).

Trial court erred in finding that a police officer's suspension was "implicitly affirmed" by a civil service commission because the suspension was not appealed to the commission as required by law; because the only disciplinary action that the officer appealed was the officer's termination, the trial court was strictly confined to a determination of whether the termination was made in good faith for cause. City of Vicksburg v. Lane, 11 So. 3d 162 (Miss. Ct. App. 2009).

Where a city discharged an employee for directing a police dog towards a suspect who was resisting arrest, the civil service commission properly reinstated the employee because the testimony of the arresting officer and the police department's policies substantially supported the commission's finding that the use of the dog was not excessive force. City of Laurel v. Brewer, 919 So. 2d 217 (Miss. Ct. App. 2005).

Police officer was not denied his procedural due process rights in regard to his suspension or termination; the officer was given the proper notice of the charges against him, the Civil Service Commission's finding that the officer's termination was for good cause was made in good faith and was supported by substantial evidence, and the Commission used the correct standard of review in deciding to affirm the officer's termination. Bowie v. City of Jackson Police Dep't, 816 So. 2d 1012 (Miss. Jan. 22, 2002).

Under § 21-31-23 the Civil Service Commission, rather than the appellee police department, was duty-bound to "certify and file" the hearing transcript with the circuit court within 30 days of the appellant police officers' appeal from the Commission's order affirming the officers' suspension. The police officers should have sought an order compelling the Commission to file the record or to otherwise show cause for its continued procrastination, and the officers, rather than the police department, would be held ultimately responsible for the filing of the transcript with the circuit court. Jackson Police Dep't v. Lawrence, 562 So. 2d 84 (Miss. 1990).

Finding of Civil Service Commission that, pursuant to statutes and civil service regulations, a city employee was a "fire alarm operator" and not a "firefighter" was supported by substantial evidence, was not arbitrary, capricious or unreasonable, and was entered in good faith. City of Meridian v. Hill, 447 So. 2d 641 (Miss. 1984).

The trial court erred in setting aside an order of the Civil Service Commission that a former fireman who had transferred to another position following a back injury was a "fire alarm operator" rather than a "firefighter," and further erred in ordering a new classification of the employee as a "fireman," where the Commission's action was taken in good faith for cause, was supported by substantial evidence, and was not arbitrary, unreasonable, confiscatory, or capricious. City of Meridian v. Hill, 447 So. 2d 641 (Miss. 1984).

Nothing in § 21-31-23 in any way prohibits the hearing of civil service appeals during vacation, and thus, the Circuit Court had jurisdiction to grant a police lieutenant's motion to reconsider its affirmation of the Civil Service Commission's ruling upholding his discharge, even though the term during which the Circuit Court affirmed the civil service commission decision had ended. City of Gulfport v. Saxton, 437 So. 2d 1215 (Miss. 1983).

Although a discharged police officer was denied due process in that the dismissal decision was made one day before the time for his response to the charges expired, the dismissed police officer waived this issue by not raising it before the Civil Service Commission prior to his full evidentiary hearing and he was thus precluded from challenging the pretermination procedure on appeal. Little v. City of Jackson, 375 So. 2d 1031 (Miss. 1979), cert. denied, 445 U.S. 933, 100 S. Ct. 1325, 63 L. Ed. 2d 768 (1980).

Statutory pretermination procedures for nonprobationary municipal civil service employees do not contain adequate due process safeguards to be followed when discharging, suspending, or demoting covered municipal employees, whose right of continued employment is a property right. Thus, risk reducing procedures must be accorded such employees, including pretermination written notice of the reasons for termination and an effective opportunity to rebut such reasons, the right to respond in writing to the charges made and to respond orally before the official charged with the responsibility of making the termination decision, a written decision on the response of the employee at the earliest practicable date, and, although not required, examination of witnesses, trial or hearing, in the discretion of the responsible official. Little v. City of Jackson, 375 So. 2d 1031 (Miss. 1979), cert. denied, 445 U.S. 933, 100 S. Ct. 1325, 63 L. Ed. 2d 768 (1980).

The dismissal of a police officer for withholding specific items of evidence on three different occasions would be upheld where the record reflected that the police officer had been given a full, fair and impartial hearing before the civil service commission and a careful appellate review by the circuit court, all in accord with the provisions of this section. Newman v. City of Biloxi, 372 So. 2d 295 (Miss. 1979).

Upon an appeal from an action of the Board of Civil Service Commission, which in a two to one vote, had upheld the dismissal of a policeman by the city manager as being in good faith for cause and not for political or religious reasons, the circuit judge did not err in refusing the patrolman a jury trial to impeach the commission's verdict, since the proposed testimony as to the alleged admission of the two commissioners who had voted to affirm the city manager's action would have been incompetent for that purpose. Stegall v. City of Meridian, 230 Miss. 176, 92 So. 2d 331 (1957).

The statutory method of review by appeal is adequate and the exclusive remedy for persons asserting civil status. Scott v. Lowe, 223 Miss. 312, 78 So. 2d 452 (1955).

Where a captain of a fire department brought suit against the city to enjoin the city officials from transferring him to another fire station, the fire captain's remedy was under the Civil Service Act which provides a plain, speedy, adequate and complete remedy by appeal and the fire captain was not entitled to relief in equity. Scott v. Lowe, 223 Miss. 312, 78 So. 2d 452 (1955).

In view of the requirement of this section [Code 1942, § 3825-11] that a certified transcript of the record shall be filed by the commission with the circuit court, the appeal in the circuit court is on the record, including the testimony, as made before the commission, and in the absence of such a certified transcript the case must be remanded for rehearing before the commission wherein a transcript of the evidence shall be preserved for use on another appeal to the circuit court. City of Meridian v. Davidson, 211 Miss. 683, 53 So. 2d 48 (1951).

On policeman's appeal from affirmance by circuit court of order of civil service commission of a city approving the policeman's discharge, the obligee on the appeal bond should have been the city instead of the civil service commission. McLeod v. Civil Serv. Comm'n, 198 Miss. 721, 21 So. 2d 916 (1945), overruled on other grounds, Meridan v. Davidson, 211 Miss. 683, 53 So. 2d 48 (1951).

5. Standard and scope of review.

Order demoting a police officer from captain to lieutenant after the officer failed to comply with a readiness inspection was upheld where substantial evidence existed to support the finding that the demotion was made in good faith for cause and was not based on political or religious reasons; there was no evidence that the demotion was retaliatory. Patterson v. City of Biloxi, 965 So. 2d 765 (Miss. Ct. App. 2007).

Even if the fired police officer had properly raised the recusal issue of a decision of the municipality's civil service commission to the circuit court sitting as an appellate court, that issue would probably still have been procedurally improper pursuant to the limited scope of review established under Miss. Code Ann. § 21-31-23. City of Vicksburg v. Cooper, 909 So. 2d 126 (Miss. Ct. App. 2005).

Terminated police officer had requested the civil service commissioner's recusal because she served as a pastor or evangelist at the church attended by the city police chief. Even though the appellate court tended to agree with the circuit court's conclusion, it held the issue was procedurally barred since the officer had failed to raise the issue on appeal to the circuit court; moreover, since the circuit court based its judgment solely on the issue of the commissioner's recusal (she did not recuse herself), the other issues raised by the city, primarily the grounds for termination of the officer, were not ripe for consideration and a remand was required. City of Vicksburg v. Cooper, 909 So. 2d 126 (Miss. Ct. App. 2005).

The scope of review of the circuit court and of the Supreme Court as to the removal of a civil service employee is limited. It is not what the court, had it been a member of the governing authority, might have done in a particular instance, or whether or not the court thinks a mistake may have been made, but instead the criterion is whether or not from an examination of the record there exists credible evidence substantiating the action taken by the governing authority. It is upon this basis that the court determines whether or not the decision was in "good faith for cause." Courts are not empowered to supervise the intelligence, wisdom or fairness of the governing authorities, and no resources are available to a court to exercise such a function even if granted, in the extremely difficult task of determining the fitness of a particular person for a particular job. It is only when the record makes it clear the there is no "substantial evidence" supporting the governing authorities' determination that a court can and must act. City of Jackson v. Froshour, 530 So. 2d 1348 (Miss. 1988).

On appeal to the circuit court from the findings of Civil Service Commission that city pound keeper was not a member of the police department and that his job had not been abolished for political or religious reasons, but was done in good faith, the scope of the review by the circuit court was to determine whether the order of the Civil Service Commission was supported by substantial evidence. City of Hattiesburg v. Jackson, 235 Miss. 109, 108 So. 2d 596 (1959).

Since the governing bodies of municipalities have power under the code to organize, operate, maintain and regulate fire departments, and have wide discretion in exercising their administrative and executive duties, including the transferring of employees of the fire department from one post to another, the Civil Service Act properly limits the review of such actions by the commission and the courts to whether they are taken in good faith for cause. Accordingly, a fire captain, transferred to another fire station, was not entitled to injunctive relief against the city in view of his plain, adequate and complete remedy by appeal under the Civil Service Act. Scott v. Lowe, 223 Miss. 312, 78 So. 2d 452 (1955).

Where a civil service commission discharged a fireman in good faith and for good cause, the fireman was not entitled to a jury trial on appeal to circuit court. Hill v. City of Hattiesburg, 223 Miss. 163, 77 So. 2d 827 (1955).

This statute [Code 1942, § 3825-11] is not unconstitutional in providing for a trial de novo on appeal from the determination of the commission in the circuit court by permitting the court or jury to substitute their own judgment for that of the commission when the latter has exercised purely an executive function, since the statute expressly limits the hearing in the circuit court to the determination of whether the judgment or order of the commission was made in good faith for cause and provides that no appeal to the circuit court shall be taken except upon such ground or grounds. City of Meridian v. Davidson, 211 Miss. 683, 53 So. 2d 48 (1951).

On appeal to the circuit court when the case is reviewed solely on the transcript of the record made before the commission, the question whether there is a basis in substantial evidence as to whether the judgment rendered by the commission was or was not made in good faith for cause is solely one of law and there is no function for a jury to perform. City of Meridian v. Davidson, 211 Miss. 683, 53 So. 2d 48 (1951).

While the rule is that the legislature in re-enacting § 10 of ch 208 of Laws of 1944 (Code 1942, § 3825-11) in ch 503 of Laws of 1950 (Code 1942, § 3825.5-17) is presumed to have approved the interpretation which the supreme court had already given the former section with respect to the right to jury trial on appeal to the circuit court, the question is not, however, what the legislature intended to do but rather whether it had the constitutional power to confer upon the circuit court the exercise of the nonjudicial function of permitting a jury to substitute its judgment for that of an executive agency on the question presented by the appeal to the circuit court as to whether or not the finding of the executive agency had a basis in substantial evidence such as to prevent it from being one not rendered in good faith for cause. City of Meridian v. Davidson, 211 Miss. 683, 53 So. 2d 48 (1951).

Where, on appeal to circuit court from an order of a city's civil service commission fixing the rights of a fireman whose position had been abolished, no question of fact arises for the decision of a jury, the action of the court, without objection, in withdrawing the case from the jury, while perhaps irregular, is not ground for reversal and no harm resulted since the question for decision was one of law and not of fact. City of Laurel v. Reddoch, 200 Miss. 259, 26 So. 2d 465 (1946).

On appeal from an action of the civil service commission of a city in sustaining the dismissal of a policeman after a full hearing for statutory cause, the question to be considered by the circuit court and a jury under its direction is whether the action taken by the civil service commission was in good faith, honestly done, and upon a cause which reasonable men, acting as such a commission would reasonably say was an adequate cause. City of Jackson v. McLeod, 199 Miss. 676, 24 So. 2d 319 (1946), cert. denied, 328 U.S. 863, 66 S. Ct. 1368, 90 L. Ed. 1633 (1946).

ATTORNEY GENERAL OPINIONS

Appeal bond is not required to perfect appeal of civil service commission decision to circuit court. Mitchell, Sept. 6, 1990, A.G. Op. #90-0642.

Term "appointing power", as used in Miss. Code Section 21-31-23 means mayor and board of aldermen; term is used in context of removal, suspension, demotion and discharge of municipal employees covered by civil service system; mayor and board of aldermen are, as implied by term, also appointing power with respect to employment; term must be exercised in manner consistent with and within limitations prescribed by Miss. Code Sections 21-31-1 et seq., and, in manner consistent with state law and city charter. Seibert, Jan. 20, 1993, A.G. Op. #92-1012.

Civil Service Commission may enter into executive session to discuss actions to be taken concerning personnel matters pursuant to Section 25-41-7(4)(a) after Commission has heard witnesses in public hearing. Bardwell, March 9, 1994, A.G. Op. #94-0121.

Members of Commission must be present and hear evidence in public hearing in order to take official action and regulation which allows Commission to delegate matter to panel with less than quorum for investigation or official action would be inconsistent with statutory scheme set forth in Section 21-31-1 et seq. Bardwell, March 9, 1994, A.G. Op. #94-0121.

If city's civil service commission, by rule or regulation, provided procedure for covered positions to be changed to non-covered positions and that procedure was followed in enactment of 1985 amending ordinance in question, position of police chief would be an "at will" position. Perkins, March 17, 1994, A.G. Op. #94-0117.

RESEARCH REFERENCES

ALR. Power of civil service body on own motion and without notice or hearing to reconsider, modify, vacate, or set aside order relating to dismissal of employee. 16 A.L.R.2d 1126.

Determination as to good faith in abolition of public officer or employment subject to civil service or merit system. 87 A.L.R.3d 1165.

Validity, construction, and effect of state statutes restricting political activities of public officers or employees. 51 A.L.R.4th 702.

Application of state law to age discrimination in employment. 51 A.L.R.5th 1.

Wrongful discharge based on public policy derived from professional ethics codes. 52 A.L.R.5th 405.

Negligent discharge of employee. 53 A.L.R.5th 219.

Discrimination against pregnant employee as violation of state fair employment laws. 99 A.L.R.5th 1.

Job discrimination against unwed mothers or unwed pregnant women as proscribed under Pregnancy Discrimination Act (42 USCS § 2000e(k)). 91 A.L.R. Fed. 178.

Pension plan designed to induce early retirement of employees of certain age as violation of Age Discrimination in Employment Act (29 USCS §§ 621 et seq.) or ERISA (29 USCS § 1001 et seq). 91 A.L.R. Fed. 296.

Circumstances which warrant finding of constructive discharge in cases under Age Discrimination in Employment Act (29 USCS §§ 621 et seq). 93 A.L.R. Fed. 10.

First Amendment protection for publicly employed firefighters subjected to discharge, transfer, or discipline because of speech. 106 A.L.R. Fed. 396.

Who is "employer" within meaning of Age Discrimination in Employment Act of 1967 (29 USCS § 621 et seq.). 137 A.L.R. Fed. 551.

Allowance and rates of interest on backpay award under Title VII of Civil Rights Act of 1964 (42 USCS §§ 2000e et seq.). 138 A.L.R. Fed. 1.

"Bona fide employee benefit plan" exception to general prohibition of Age Discrimination in Employment Act (29 U.S.C.S. § 623(f)(2)(B)) as applied to plans other than early retirement incentive plans. 184 A.L.R. Fed. 1.

Am Jur. 15A Am. Jur. 2d, Civil Service §§ 54 et seq.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 25, 260, 298 309 et seq.

5A Am. Jur. Pl & Pr Forms (Rev), Civil Service, Forms 21 et seq. (removal and discharge of employee).

5A Am. Jur. Pl & Pr Forms (Rev), Civil Service, Forms 41 et seq. (reinstatement of discharged employee).

20A Am. Jur. Pl & Pr Forms (Rev), Public Officers and Employees, Form 32 (petition or application to oust de facto public officer appointed to fill temporary vacancy).

20A Am. Jur. Pl & Pr Forms (Rev), Public Officers and Employees, Forms 91 et seq. (remedies of discharged employees).

CJS. 62 C.J.S., Municipal Corporations §§ 833-835 et seq.

§ 21-31-25. Fixing of rate of compensation.

The fixing of the rate of compensation of every employee coming under the provisions of Sections 21-31-1 through 21-31-27 shall remain vested in those public officials authorized by law to fix the rate of such compensation, and nothing contained in said sections shall infringe upon the power and authority of any such public officials to so fix the rate of such compensation.

SOURCES: Codes, 1942, § 3825-12; Laws, 1944, ch. 208, § 11.

Cross References — Fixing of rate of compensation in certain other municipalities, see § 21-31-73.

ATTORNEY GENERAL OPINIONS

A municipal civil service commission would have no authority with regard to benefits to be provided to municipal employees by the governing authority. Bowman, Feb. 7, 2003, A.G. Op. #03-0771.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 252 et seq.

20A Am. Jur. Pl & Pr Forms (Rev), Public Officers and Employees, Form 11 (complaint, petition, or declaration by public officer to recover compensation).

20A Am. Jur. Pl & Pr Forms (Rev), Public Officers and Employees, Form 12 (complaint, petition, or declaration by public officer against predecessor in office to recover compensation paid predecessor while illegally holding over in office).

CJS. 63 C.J.S. Municipal Corporations § 950 et seq.

§ 21-31-27. Political services and contributions.

No person holding any office, place, position or employment subject to civil service, is under any obligation to contribute to any political fund or to render any political service to any person or party whatsoever, and no person shall be removed, reduced in grade or salary, or otherwise prejudiced for refusing so to do. No public officer, whether elected or appointed, shall discharge, promote, demote or in any manner change the official rank, employment or compensation of any person under civil service, or promise or threaten so to do, for giving or withholding, or neglecting to make any contribution of money, or service, or any other valuable thing, for any political purpose.

If any person holding any office, place, position or employment subject to civil service, actively participates in political activity in any primary or election in a municipality where he is employed, it shall be deemed cause for removal.

SOURCES: Codes, 1942, § 3825-13; Laws, 1944, ch. 208, § 12.

Cross References — Political services and contributions in certain other municipalities, see § 21-31-75.

JUDICIAL DECISIONS

1. In general.

Statute which was part of civil service system applicable to full paid employees of fire and police departments did not apply to city administrative employee, who was part of the other civil service system covering administrative and municipal employees. Bullock v. Mississippi Emp. Sec. Comm'n, 697 So. 2d 1147 (Miss. 1997), reh'g denied, 697 So. 2d 1191 (Miss. 1997).

Preclearance provisions of Voting Rights Act, requiring preclearance before enforcement of any rules affecting voting rights of citizens, were not applicable to state statutes which were enacted prior to Act; preclearance provisions were not to be applied retroactively. Bullock v. Mississippi Emp. Sec. Comm'n, 697 So. 2d 1147 (Miss. 1997), reh'g denied, 697 So. 2d 1191 (Miss. 1997).

ATTORNEY GENERAL OPINIONS

Municipal civil service employee could run for county office without having to resign or take leave of absence; leave of absence without pay could be granted by governing authorities provided it is done in accordance with existing municipal leave policies; if municipal employee chooses to run for office while remaining on municipal payroll, he must not engage in any campaigning during hours for which he is being paid to work for municipality. Oubre, March 28, 1990, A.G. Op. #90-0221.

Based on Miss. Code Section 21-31-27, if fireman actively seeks office of mayor while still employee covered by civil service, fireman would be subjecting himself to dismissal pursuant to procedure set forth in Miss. Code Section 21-31-23. Schissel, Feb. 25, 1993, A.G. Op. #93-0089.

Only full paid employees of the fire and police departments are mandatorily included within civil service coverage, but other full time employees may be extended coverage in the discretion of the governing authorities with the approval of the Civil Service Commission upon adoption of a proper ordinance. Stafford, March 27, 1998, A.G. Op. #98-0160.

While covered employees may make contributions and provide political services to candidates and parties in federal, state, and municipal elections in municipalities where they are not employed, they may not do so in primaries and elections conducted in and by the municipality where they are employed without being subject to removal. Barry, Feb. 23, 2001, A.G. Op. #2001-0095.

Under state law, a municipal civil service employee may be a candidate for political office in a municipality where he is not employed, provided he meets all qualifications to hold the office he seeks and does not campaign during hours he is being paid to perform his duties as a municipal employee; furthermore, an employee may serve in such dual capacity should he win the election, provided he continues to work the required hours exclusively for the municipality. Cochran, Feb. 23, 2001, A.G. Op. #2001-0096.

The Chief of Police must be included in the civil service system of the city of Ocean Springs because the more specific provisions of Miss. Code Ann. § 21-31-13, concerning civil service systems in a handful of described municipalities, control over the more general provisions of Miss. Code Ann. § 21-3-3, which applies to all code charter municipalities in Mississippi. Edwards, March 30, 2007, A.G. Op. #07-00152, 2007 Miss. AG LEXIS 134.

CIVIL SERVICE SYSTEM IN CERTAIN OTHER MUNICIPALITIES

Sec.

21-31-51. Adoption of civil service system mandated in certain municipalities.
21-31-53. Appointment and removal, qualifications, and term of office of commissioners.
21-31-55. Election of officers and meetings of commission; secretary; board of examiners.
21-31-57. Duties of the commission.
21-31-59. Accommodations, supplies and clerical aid to be furnished to commission.
21-31-61. Coverage afforded by civil service system.
21-31-63. Qualifications of applicants seeking civil service position.
21-31-65. Adoption and induction of incumbents into civil service.
21-31-67. Appointments and lay-offs.
21-31-69. Tenure of office and grounds for discipline.
21-31-71. Removal, suspension, demotion, and discharge.
21-31-73. Fixing of rate of compensation.
21-31-75. Political services and contributions.

§ 21-31-51. Adoption of civil service system mandated in certain municipalities.

(1) There is hereby created a civil service commission to administer a civil service system in every municipality described in subsection (2) of this section which has administrative and other employees employed on a monthly basis.

(2) The provisions of subsection (1) of this section shall apply to:

(a) Any municipality, operating under a commission form of government, and having a population of more than twenty-one thousand, according to the federal census of 1950; and

(b) Any municipality located in the Yazoo-Mississippi Delta Levee District, and having a population of more than fifteen thousand and less than twenty thousand, according to the federal census of 1950.

SOURCES: Codes, 1942, § 3825-30; Laws, 1944, ch. 209, § 1; Laws, 1952, ch. 368; Laws, 1960, ch. 430.

Cross References — Commission form of government, see § 21-5-1 et seq.

Applicability of civil service laws to the council-manager plan of government, see § 21-9-79.

Creation of civil service system in certain other municipalities, see §§ 21-31-1 et seq.

Appointment, removal, qualifications, and term of office of civil service commissioners, see § 21-31-53.

Duties of the commission, see § 21-31-57.

Accommodations, supplies and clerical aid to be furnished to commission, see § 21-31-59.

Civil service system's coverage, see § 21-31-61.

Adoption and induction of incumbents into civil service system, see § 21-31-65.

Tenure of office and grounds for discipline, see § 21-31-69.

Removal, suspension, demotion, and discharge, see § 21-31-71.

Fixing rate of compensation of employees, see § 21-31-73.

JUDICIAL DECISIONS

1. In general.

Statute which was part of civil service system applicable to full paid employees of fire and police departments did not apply to city administrative employee, who was part of the other civil service system covering administrative and municipal employees. Bullock v. Mississippi Emp. Sec. Comm'n, 697 So. 2d 1147 (Miss. 1997), reh'g denied, 697 So. 2d 1191 (Miss. 1997).

Civil Service system established by §§ 21-31-1 to 21-31-27 is mandatory only for fire and police departments of municipalities designated in § 21-31-1; civil service system established by §§ 21-31-51 to 21-31-75 is mandatory as to all administrative and other employees employed on monthly basis by municipalities designated in § 21-31-51. City of Laurel v. Samuels, 469 So. 2d 530 (Miss. 1985).

Community organization worker and special worker in community development department, who are employed on monthly salary basis, by municipality, operating under commission form of government and having population of more than 21,000, according to federal census of 1950, may be terminated from employment only in accordance with statutory civil service provisions (§ 21-31-71). City of Laurel v. Samuels, 469 So. 2d 530 (Miss. 1985).

ATTORNEY GENERAL OPINIONS

The Chief of Police must be included in the civil service system of the city of Ocean Springs because the more specific provisions of Miss. Code Ann. § 21-31-13, concerning civil service systems in a handful of described municipalities, control over the more general provisions of Miss. Code Ann. § 21-3-3, which applies to all code charter municipalities in Mississippi. Edwards, March 30, 2007, A.G. Op. #07-00152, 2007 Miss. AG LEXIS 134.

RESEARCH REFERENCES

Am Jur. 15A Am. Jur. 2d, Civil Service §§ 1 et seq.

§ 21-31-53. Appointment and removal, qualifications, and term of office of commissioners.

(1)(a) The members of the civil service commission shall be appointed by the city commission, shall be three (3) in number, and shall serve without compensation; however, the governing authority of any municipality having a population of not less than one hundred thousand (100,000) according to the federal census of 1960 may, in its discretion, pay each of the members of said commission a sum not to exceed Three Hundred Dollars ($300.00) per month to compensate them for their services, and the governing authorities of any other municipality, in their discretion, may pay each of the members of the commission a sum not to exceed One Hundred Dollars ($100.00) per month to compensate them for their services. No person shall be appointed a member of such commission who is not a citizen of the United States, a resident of such city for at least five (5) years immediately preceding such appointment, and an elector of the county wherein he resides. The terms of office of such commissioners shall be for six (6) years, except that the first three (3) members shall be appointed for different terms as follows: one (1) to serve a period of two (2) years, one (1) to serve a period of four (4) years, and one (1) to serve a period of six (6) years.

(b) From and after May 18, 1988, the effective date of Chapter 535, 1988 Regular Session, the governing authorities of any municipality organized under the provisions of Chapter 8, Title 21, Mississippi Code of 1972, in which a civil service commission is created pursuant to Sections 21-31-51 through 21-31-75, may increase the members of the commission to the same number of wards into which the municipality is divided and, if the commission is so expanded, the governing authorities shall appoint one (1) member of the commission from each ward. The commissioners shall serve without compensation; however, the governing authority of any municipality having a population of not less than one hundred thousand (100,000) according to the federal census of 1960 may, in its discretion, pay each of the members of the commission a sum not to exceed Three Hundred Dollars ($300.00) per month to compensate them for their services, and the governing authorities of any other municipality, in their discretion, may pay each of the members of the commission a sum not to exceed One Hundred Dollars ($100.00) per month to compensate them for their services. No person shall be appointed a member of such commission who is not a citizen of the United States, a resident of the municipality for at least five (5) years immediately preceding such appointment, and an elector of the county wherein he resides. When making initial appointments under this paragraph (b), the governing authorities may stagger the terms of such appointees provided that no initial appointment is made for a period of less than one (1) year nor more than six (6) years; thereafter, all appointments shall be for terms of six (6) years. Appointment of members of the commission by the governing authorities under this paragraph (b) shall be made by the mayor with the confirmation of an affirmative vote of a majority of the city council present and voting at any meeting.

(c) From and after July 1, 1994, the governing authorities of any municipality described in Section 21-31-51(2)(b), in which a civil service commission is created pursuant to Sections 21-31-51 through 21-31-75, may increase the membership of the commission to five (5), with one (1) member appointed by the governing authorities from each ward and one (1) appointed from the municipality at large. The governing authorities of the municipality may, in their discretion, pay each of the members of the commission a sum not to exceed One Hundred Dollars ($100.00) per month. No person shall be appointed a member of such commission who is not a citizen of the United States, a resident of the municipality for at least five (5) years immediately preceding such appointment, and an elector of the county wherein he resides. When making initial appointments under this paragraph (c), the governing authorities may stagger the terms of such appointees provided that no initial appointment is made for a period of less than one (1) year nor more than six (6) years; thereafter, all appointments shall be for terms of six (6) years.

(2) Any member of such commission may be removed from office for incompetency, incompatibility, dereliction of duty or other good cause, by the

appointing power. However, no member shall be removed until charges have been preferred in writing and a full hearing before the appointing power. Any member being removed shall have the right of appeal, any time within thirty (30) days thereafter, to the circuit court and may demand a jury; such trial shall be confined to the determination of whether the order of removal made by the appointing power was, or was not, made in good faith and for cause.

(3) A majority of the members of the commission shall constitute a quorum.

SOURCES: Codes, 1942, § 3825-31; Laws, 1944, ch. 209 § 1; Laws, 1964, ch. 507, § 2; Laws, 1973, ch. 323, § 1; Laws, 1977, ch. 361; Laws, 1988, ch. 535, § 2; Laws, 1994, ch. 549, § 2, eff from and after July 1, 1994.

Cross References — Appointment, removal, qualifications and term of office of commissioners in certain other municipalities, see § 21-31-5.

Duties of the civil service commission, see § 21-31-57.

Civil service system's coverage, see § 21-31-61.

RESEARCH REFERENCES

Am Jur. 15A Am. Jur. 2d, Civil Service § 8.

§ 21-31-55. Election of officers and meetings of commission; secretary; board of examiners.

Immediately after the appointment of the civil service commission, the commission shall organize by electing one of its members chairman. The commission shall hold regular meetings at least once each month, and such additional meetings as may be required for the proper discharge of its duties.

The commission shall appoint a secretary and a board of examiners, which board shall consist of the fire chief, the police chief, and a third member to be named by the commission, all of whom shall serve without compensation. The secretary shall keep the records and preserve all reports made to the commission, and also a record of all examinations held under the direction of the board of examiners, and perform such other duties as the commission may prescribe. The members of the board and the secretary are subject to suspension and discharge in the same manner as the commissioners.

SOURCES: Codes, 1942, § 3825-34; Laws, 1944, ch. 209, § 4.

Cross References — Time for filing a petition for a writ of certiorari to the circuit court for review of a decision of a municipal civil service commission, see § 11-51-95.

Election of officers and meetings of commission in certain other municipalities, see § 21-31-7.

Appointment, removal, qualifications, and term of office of civil service commissioners, see § 21-31-53.

Furnishing of accommodations, supplies and clerical aid, see § 21-31-59.

Basis for all appointments and promotions, see § 21-31-61.

Qualifications of applicants seeking civil service positions, see § 21-31-63.

Adoption and induction of incumbents into civil service system, see § 21-31-65.
Appointments and layoffs of employees, see § 21-31-67.

ATTORNEY GENERAL OPINIONS

This section requires the examinations to be conducted under the direction of the board of examiners. However, the board of examiners may use the services of others in conducting the examinations. Boschert, May 7, 2004, A.G. Op. 04-0188.

RESEARCH REFERENCES

Am Jur. 15A Am. Jur. 2d, Civil Service §§ 8, 23 et seq.

§ 21-31-57. Duties of the commission.

It shall be the duty of the civil service commission to make suitable rules and regulations not inconsistent with the provisions of Sections 21-31-51 through 21-31-75 and not inconsistent with personnel rules and regulations duly adopted by the governing authorities of the municipality. Such rules and regulations shall provide in detail the manner of conducting examinations, appointments, promotions, transfers, reinstatements, demotions, suspensions and discharges, and may also provide for any other matter connected with the general subject of personnel administration, and which may be considered desirable to further carry out the general purposes of Sections 21-31-51 through 21-31-75. It shall have the power to conduct investigations, and make reports on all matters touching the enforcement and effect of the provisions of Sections 21-31-51 through 21-31-75, and the rules and regulations prescribed hereunder. The commission shall have the power to investigate all complaints which must be reduced to writing, subpoena witnesses, administer oaths and conduct hearings.

SOURCES: Codes, 1942, § 3825-35; Laws, 1944, ch. 209, § 5; Laws, 1994, ch. 549, § 3, eff from and after July 1, 1994.

Cross References — Time for filing a petition for a writ of certiorari to the circuit court for review of a decision of a municipal civil service commission, see § 11-51-95.
Duties of commission in certain other municipalities, see § 21-31-9.
Appointment, removal, qualifications, and term of office of civil service commissioners, see § 21-31-53.
Qualifications of applicants seeking civil service positions, see § 21-31-63.
Adoption and induction of incumbents into civil service system, see § 21-31-65.
Appointments and layoffs of employees, see § 21-31-67.
Employee's tenure of office and grounds for discipline, see § 21-31-69.
Removal, suspension, demotion or discharge of an employee, see § 21-31-71.

ATTORNEY GENERAL OPINIONS

A civil service commission has the discretion, through the adoption of suitable rules and regulations, to determine which positions will be subject to civil service coverage. Reynolds, May 13, 1992, A.G. Op. #92-0328.

A civil service commission, pursuant to its rule making authority, may adopt a procedure whereby covered positions may be changed to non-covered positions, provided such procedure is reasonable and is consistent with pertinent statutory provisions relating to civil service coverage. Reynolds, May 13, 1992, A.G. Op. #92-0328.

The power of the Civil Service Commission to enact rules under Section 21-31-9 is not expressly subject to the same restrictive language found in Section 21-31-57, requiring that all rules of the Civil Service Commission be consistent with personnel rules adopted by the governing authorities of the municipality; however, the 1994 Amendment to Section 21-31-57 merely made explicit what was already implicit in municipal law, and the detailed rules of any civil service commission may not be inconsistent with the general rules and regulations adopted by the governing authorities. Bowman, March 17, 2000, A.G. Op. #2000-0118.

RESEARCH REFERENCES

Am Jur. 15A Am. Jur. 2d, Civil Service §§ 8 et seq., 23 et seq.

5A Am. Jur. Pl & Pr Forms (Rev), Civil Service, Forms 41 et seq. (public employee, recovery of lost salary after dismissal and reinstatement).

§ 21-31-59. Accommodations, supplies and clerical aid to be furnished to commission.

The duly constituted authorities of each and every city coming within the purview of Sections 21-31-51 through 21-31-75, shall provide the commission with suitable and convenient rooms and accommodations and cause the same to be furnished, heated and lighted and supplied with all office supplies and equipment necessary to carry on the business of the commission and with such clerical assistance as may be necessary, all of which is to be commensurate with the number of persons in each such city coming within the purview of Sections 21-31-51 through 21-31-75. The failure upon the part of the duly constituted authorities to do so, shall be considered a violation of this section and shall be punishable as such.

SOURCES: Codes, 1942, § 3825-43; Laws, 1944, ch. 209, § 13.

Cross References — Accommodations, supplies, etc. to be furnished to commission in certain other municipalities, see § 21-31-11.

§ 21-31-61. Coverage afforded by civil service system.

The provisions of Sections 21-31-51 through 21-31-75 shall include all administrative and other employees on a monthly salary basis. All appointments to and promotions in said departments shall be made solely on merit, efficiency and fitness which may be ascertained by open competitive examination and impartial investigation. No person shall be reinstated in, or transferred, suspended or discharged from, any place, position or employment contrary to the provisions of Sections 21-31-51 through 21-31-75.

All incumbents and future appointees shall be subject to civil service, except, however, those appointees now and hereafter serving as extra members, which employees shall be subject to removal for replacement by any person now or hereafter serving in the armed services; or, if temporarily employed, the commission shall have authority to so determine and replace with a new employee who shall be subject to the provisions of Sections 21-31-51 through 21-31-75.

The provisions of Sections 21-31-51 through 21-31-75 shall not include any new employee who has not successfully completed all requirements necessary to earn regular or permanent status as a municipal employee.

SOURCES: Codes, 1942, §§ 3825-32, 3825-33; Laws, 1944, ch. 209, §§ 2, 3; Laws, 1994, ch. 549, § 5, eff from and after July 1, 1994.

Cross References — Coverage afforded by civil service system in certain other municipalities, see § 21-31-13.

Adoption and induction of incumbents into civil service system, see § 21-31-65.

Removal, suspension, demotion, or discharge of an employee, see § 21-31-71.

JUDICIAL DECISIONS

1. In general.

There are two separate civil service systems: one system applies only to full paid employees of fire and police departments, and other system applies only to administrative and other municipal employees on monthly salary. Bullock v. Mississippi Emp. Sec. Comm'n, 697 So. 2d 1147 (Miss. 1997), reh'g denied, 697 So. 2d 1191 (Miss. 1997).

ATTORNEY GENERAL OPINIONS

An elected official is not covered by civil service, but unless there is a specific private charter provision or a specific statutory provision that exempts department heads from coverage, such appointed positions are covered by civil service. Reynolds, May 13, 1992, A.G. Op. #92-0328.

For the purposes of Section 21-31-61, administrative employees would be those who execute the orders and ordinances of the policy-making body of the municipality, which is the city council. No authority can be found for a municipal governing authority to create a "public office" that is not otherwise provided for by law. Kohnke, Feb. 24, 2006, A.G. Op. 06-0045.

RESEARCH REFERENCES

Am Jur. 15A Am. Jur. 2d, Civil Service §§ 23 et seq.

5A Am. Jur. Pl & Pr Forms (Rev), Civil Service, Form 3.4 (Complaint, petition, or declaration-Declaratory relief and injunction-Proper qualifications for promotions within police force).

8 Am. Jur. Pl & Pr Forms (Rev), Declaratory Judgments, Form 4.3 (Complaint, petition, or declaration-to determine validity of promotion procedure within police department).

§ 21-31-63. Qualifications of applicants seeking civil service position.

Any applicant for a position of any kind under civil service must be a citizen of the United States and an elector of the county in which he resides and must meet only such bona fide occupational residency requirements as may be determined by the civil service commission or the governing authority of the municipality.

SOURCES: Codes, 1942, § 3825-38; Laws, 1944, ch. 209 § 8; Laws, 1994, ch. 549, § 4, eff from and after July 1, 1994.

Cross References — Qualifications of applicants seeking civil service position in certain other municipalities, see § 21-31-15.

RESEARCH REFERENCES

Am Jur. 15A Am. Jur. 2d, Civil Service § 24, 25, 32.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 242-244.

5A Am. Jur. Pl & Pr Forms (Rev), Civil Service, Form 4 (public employee, compelling placement on promotion list).

CJS. 62 C.J.S., Municipal Corporations §§ 571, 783-785 et seq.

§ 21-31-65. Adoption and induction of incumbents into civil service.

For the benefit of the public service and to prevent delay, injury, or interruption therein by reason of the enactment of Sections 21-31-51 through 21-31-75, all persons holding a position as an administrative or other employee (firemen and policemen excepted) of any such municipality coming under the provisions of Sections 21-31-51 through 21-31-75, who shall have served continuously in such positions for a period of at least the preceding six months, are hereby declared eligible for permanent appointment under civil service to the offices, positions or employments which they shall then hold, respectively, without examination or other act on their part, and not on probation, and every such person is hereby automatically adopted and inducted permanently into civil service, into such office, place, position or employment which such person then holds as completely and effectually to all intents and purposes as if said person had been permanently appointed thereto under civil service after examination and investigation.

SOURCES: Codes, 1942, § 3825-37; Laws, 1944, ch. 209, § 7.

Cross References — Adoption and induction of incumbents into civil service in certain other municipalities, see § 21-31-17.

RESEARCH REFERENCES

Am Jur. 15A Am. Jur. 2d, Civil Service § 31.

§ 21-31-67. Appointments and lay-offs.

The civil service commission shall keep a list of all administrative and other employees on a monthly salary basis (firemen and policemen excepted), and formulate methods of determining the relative qualifications of persons seeking employment in any such department, and give preference to those having the best qualifications. The commission shall provide that men laid off because of a curtailment of expenditures, reduction in force, and like causes, shall be the last man or men, including probationers, that have been appointed to any such position, until such reductions necessary shall have been accomplished. However, in the event said forces shall again be increased in number, those suspended shall be reinstated before any new appointments shall be made.

SOURCES: Codes, 1942, § 3825-36; Laws, 1944, ch. 209, § 6.

Cross References — Appointments and lay-offs in certain other municipalities, see § 21-31-19.

RESEARCH REFERENCES

Am Jur. 15A Am. Jur. 2d, Civil Service §§ 26-30, 34, 58, 59, 65, 66, 67, 71, 83, 87, 88, 103, 104, 107.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 245.

CJS. 62 C.J.S., Municipal Corporations § 783-785 et seq.

§ 21-31-69. Tenure of office and grounds for discipline.

The tenure of everyone holding an office, place, position or employment under the provisions of Sections 21-31-51 through 21-31-75 shall be only during good behavior. Any such person may be removed or discharged, suspended without pay, demoted or reduced in rank, or deprived of vacation privileges or other special privileges, or any combination thereof, for any of the following reasons:

Incompetency, inefficiency or inattention of duty; dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public or a fellow employee; or any other act of omission or commission tending to injure the public service.

SOURCES: Codes, 1942, § 3825-39; Laws, 1944, ch. 209, § 9; Laws, 1984, ch. 521, § 3, eff from and after July 1, 1984.

Cross References — Tenure of office and grounds for discipline in certain other municipalities, see § 21-31-21.

No prejudice toward any employee for failure to engage in, or contribute to, any political activity, see § 21-31-75.

RESEARCH REFERENCES

Am Jur. 15A Am. Jur. 2d, Civil Service §§ 43, 54, 58, 67, 68, 71, 73, 75.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 250, 303 et seq.

CJS. 62 C.J.S., Municipal Corporations §§ 798-801, 797, 846-849.

§ 21-31-71. Removal, suspension, demotion, and discharge.

No person in the classified civil service who shall have been permanently appointed or inducted into civil service under the provisions of Sections 21-31-51 through 21-31-75 shall be removed, suspended, demoted or discharged, or any combination thereof, except for cause, and only upon the written accusation of the appointing power or any citizen or taxpayer, a written statement of which accusation, in general terms, shall be served upon the accused, and a duplicate filed with the commission. The mayor may suspend a member pending the confirmation of the suspension by the regular appointing power, which shall be within three (3) days.

In the absence of extraordinary circumstances or situations, before any such employee may be removed or discharged, he shall be given written notice of the intended termination, which notice shall state the reasons for termination and inform the employee that he has the right to respond in writing to the reasons given for termination within a reasonable time and respond orally before the official charged with the responsibility of making the termination decision. Such official may, in his discretion, provide for a pretermination hearing and examination of witnesses, and if a hearing is to be held, the notice to the employee shall also set the time and place of such hearing. A duplicate of such notice shall be filed with the commission. After the employee has responded or has failed to respond within a reasonable time, the official charged with the responsibility of making the termination decision shall determine the appropriate disciplinary action, and shall notify the employee of his decision in writing at the earliest practicable date.

Where there are extraordinary circumstances or situations which require the immediate discharge or removal of an employee, such employee may be terminated without a pretermination hearing as required by this section, but such employee shall be given written notice of the specific reasons for termination within twenty-four (24) hours after the termination, and shall be given an opportunity for a hearing similar to the pretermination hearing provided in this section within twenty (20) days after the date of termination. For the purposes of this section, extraordinary situations or circumstances include, but are not limited to, circumstances where retention of the employee would result in damage to municipal property, would be detrimental to the interest of municipal government or would result in injury to the employee, to a fellow employee or to the general public.

Any person so removed, suspended, demoted, discharged or combination thereof may, within ten (10) days from the time of such disciplinary action, file with the commission a written demand for an investigation, whereupon the commission shall conduct such investigation. The investigation shall be confined to the determination of the question of whether such disciplinary action was or was not made for political or religious reasons and was or was not made in good faith for cause. After such investigation the commission may, if in its estimation the evidence is conclusive, affirm the disciplinary action, or if it shall find that the disciplinary action was made for political or religious reasons, or was not made in good faith for cause, shall order the immediate reinstatement or reemployment of such person in the office, place, position or employment from which such person was removed, suspended, demoted, discharged or combination thereof, which reinstatement shall, if the commission so provides in its discretion, be retroactive, and entitle such person to pay or compensation from the time of such disciplinary action. The commission upon such investigation may, in lieu of affirming the disciplinary action, modify the order of removal, suspension, demotion, discharge or combination thereof by directing a suspension, without pay, for a given period and subsequent restoration of duty, or by directing a demotion in classification, grade or pay, or by any combination thereof. The findings of the commission shall be certified in writing to the appointing power, and shall be forthwith enforced by such officer.

All investigations made by the commission pursuant to the provisions of this section shall be by public hearing, after reasonable written notice to the accused of the time and place of such hearing, at which hearing the accused shall be afforded an opportunity of appearing in person and by counsel, and presenting his defense. The findings of the commission shall be conclusive and binding unless either the accused or the municipality shall, within thirty (30) days from the date of the entry of such judgment or order on the minutes of the commission and notification to the accused and the municipality, appeal to the circuit court of the county within which the municipality is located. Any appeal of the judgment or order of the commission shall not act as a supersedeas of such judgment or order, but the judgment or order shall remain in effect pending a final determination of the matter on appeal. Such appeal shall be taken by serving the commission and the appellee, within thirty (30) days after the entry of such judgment or order, a written notice of appeal, stating the grounds thereof, and demanding that a certified transcript of the record and of all papers on file in the office of the commission affecting or relating to such judgment or order, be filed by the commission with such court. The commission shall, within thirty (30) days after the filing of such notice, make, certify and file such transcript with such court. The said circuit court shall thereupon proceed to hear and determine such appeal. However, such hearing shall be confined to the determination of whether the judgment or order of removal, discharge, demotion, suspension or combination thereof made by the commission, was or was not made in good faith for cause, and no appeal to such court shall be taken except upon such ground or grounds.

SOURCES: Codes, 1942, § 3825-40; Laws, 1944, ch. 209, § 10; Laws, 1984, ch. 521, § 4, eff from and after July 1, 1984.

Cross References — Time for filing a petition for a writ of certiorari to the circuit court for review of a decision of a municipal civil service commission, see § 11-51-95.

Removal of any public utility commissioner for cause, see § 21-27-15.

Removal, suspension, demotion and discharge in certain other municipalities, see § 21-31-23.

No prejudice toward any employee for failure to engage in, or contribute to, any political activity, see § 21-31-75.

JUDICIAL DECISIONS

1. In general.
2. Suspension.
3. Discharge.

1. In general.

Circuit court erred in ordering a city, as the appellee, to pay the costs of preparing the transcript for a city fire department employee's appeal. Pursuant to Miss. Code Ann. § 21-31-71, the burden to produce and file the record, including the transcript fell squarely on the civil service commission. Fields v. City of Clarksdale, 133 So. 3d 373 (Miss. Ct. App. 2014).

Miss. Unif. Cir. & Cty. R. 5.03 and Miss. Code Ann. § 21-31-71 were not the applicable standards of review in an appeal because, while the case did involve an appeal from an administrative agency, the court was not reviewing a decision from the administrative agency. Fields v. City of Clarksdale, 133 So. 3d 373 (Miss. Ct. App. 2014).

A civil service employee cannot lawfully be disciplined twice for the same conduct. Ladnier v. City of Biloxi, 749 So. 2d 139 (Miss. Ct. App. 1999).

The statute allows the civil service commission to suspend, demote, or discharge an employee by suspending without pay or ordering a demotion in classification, grade or pay, or use any combination of the three. Beasley v. City of Gulfport, 724 So. 2d 883 (Miss. 1998).

A circuit court had jurisdiction to issue a writ of mandamus compelling a city to comply with an order of its civil service commission to reinstate an employee where the city had placed the employee in a different job position from the one she had previously held; placement of the employee in another position at the same salary was not "reinstatement" which entitles an employee to be reinstated in the position from which he or she was removed. City of Jackson v. Martin, 623 So. 2d 253 (Miss. 1993).

Community organization worker and special worker in community development department, who are employed on monthly salary basis, by municipality, operating under commission form of government and having population of more than 21,000, according to federal census of 1950, may be terminated from employment only in accordance with statutory civil service provisions (§ 21-31-71). City of Laurel v. Samuels, 469 So. 2d 530 (Miss. 1985).

The scope of review of the circuit court and of the Supreme Court as to the removal of a civil service employee is limited. It is not what the court, had it been a member of the governing authority, might have done in a particular instance, or whether or not the court thinks a mistake may have been made, but instead the criterion is whether or not from an examination of the record there exists credible evidence substantiating the action taken by the governing authority. It is upon this basis that the court determines whether or not the decision was in "good faith for cause." Courts are not empowered to supervise the intelligence, wisdom or fairness of the governing authorities, and no resources are available to a court to exercise such a function even if granted, in the extremely difficult task of determining the fitness of a particular person for a particular job. It is only when the record makes it clear the there is no "substantial evidence" supporting the governing authorities' determination that a court can and must act. Mississippi State Hwy. Comm'n v. Robertson, 350 So. 2d 1348 (Miss. 1977).

As far as the municipality is concerned, the municipal civil service commission's decision is final and not subject to appeal, so that a city, mayor, and chief of police could not appeal from a civil service commission order directing the reinstatement of a policeman determined to have been discharged without cause. City of Jackson v. Little, 245 So. 2d 204 (Miss. 1971).

Where a clerk typist employed by a city police department allegedly stated in the presence of two city police officers that "Captain 724's wife was a whore prior to the time she married Captain 724." and had made a similar statement to another police officer on the same force, there was substantial evidence to support her discharge by the chief of police and the commission's order affirming that action, and the fact that the city civil service commission's order affirming the discharge did not specifically state that the discharge was "in good faith for cause" did not render the order insufficient. City of Jackson Police Dep't v. Ruddick, 243 So. 2d 566 (Miss. 1971).

The fact that a police captain's wife's complaint about alleged statements made about her by a police department clerk typist was not in writing was insignificant, where written complaint about the clerk typist's conduct was made by the chief of police who was the appointing authority and the one who subsequently discharged the typist under the Municipal Civil Service Act. City of Jackson Police Dep't v. Ruddick, 243 So. 2d 566 (Miss. 1971).

Where a policeman was removed from his job for taking money from parking meter on the city streets and where he did not within ten days make a written demand from the Civil Service Board for an investigation and a hearing, the policeman could not later obtain a review of legality of his removal by bill in chancery court, since he did not bring himself within the exclusive procedure for review. Tennant v. Finane, 227 Miss. 410, 86 So. 2d 453 (1956).

Where a policeman was seeking review of removal from city employment, although the demurrer admitted that the policeman had not received a written accusation of the reasons for his removal, the policeman's exclusive remedy was still statutory. Tennant v. Finane, 227 Miss. 410, 86 So. 2d 453 (1956).

2. Suspension.

The statute applies to the commission form of government and, therefore, contemplates that someone other than the mayor will confirm a suspension issued by the mayor. Beasley v. City of Gulfport, 724 So. 2d 883 (Miss. 1998).

3. Discharge.

Where the chief administrative officer of a city issued an original letter of suspension of a city employee and it was confirmed by the mayor, the mayor had the authority to discharge the employee. Beasley v. City of Gulfport, 724 So. 2d 883 (Miss. 1998).

RESEARCH REFERENCES

ALR. Power of civil service body on own motion and without notice or hearing to reconsider, modify, vacate, or set aside order relating to dismissal of employee. 16 A.L.R.2d 1126.

Determination as to good faith in abolition of public officer or employment subject to civil service or merit system. 87 A.L.R.3d 1165.

Validity, construction, and effect of state statutes restricting political activities of public officers or employees. 51 A.L.R.4th 702.

Application of state law to age discrimination in employment. 51 A.L.R.5th 1.

Wrongful discharge based on public policy derived from professional ethics codes. 52 A.L.R.5th 405.

Negligent discharge of employee. 53 A.L.R.5th 219.

Discrimination against pregnant employee as violation of state fair employment laws. 99 A.L.R.5th 1.

Job discrimination against unwed mothers or unwed pregnant women as proscribed under Pregnancy Discrimination Act (42 USCS § 2000e(k). 91 A.L.R. Fed. 178.

Pension plan designed to induce early retirement of employees of certain age as violation of Age Discrimination in Employment Act (29 USCS §§ 621 et seq.) or ERISA (29 USCS §§ 1001 et seq). 91 A.L.R. Fed. 296.

Circumstances which warrant finding of constructive discharge in cases under Age Discrimination in Employment Act (29 USCS §§ 621 et seq.), 93 A.L.R. Fed. 10.

Who is "employer" within meaning of Age Discrimination in Employment Act of 1967 (29 USCS § 621 et seq.). 137 A.L.R. Fed. 551.

Allowance and rates of interest on backpay award under Title VII of Civil Rights Act of 1964 (42 USCS §§ 2000e et seq.). 138 A.L.R. Fed. 1.

Preemption of state law wrongful discharge claim, not arising from whistleblowing, by § 541(A) of Employee Retirement Income Security Act of 1974 (29 U.S.C.S. § 1144(A)). 176 A.L.R. Fed. 433.

"Bona fide employee benefit plan" exception to general prohibition of Age Discrimination in Employment Act (29 U.S.C.S. § 623(f)(2)(B)) as applied to plans other than early retirement incentive plans. 184 A.L.R. Fed. 1.

Am Jur. 15A Am. Jur. 2d, Civil Service §§ 54, 58, 59, 65-68, 71, 72, 76, 77, 79, 80, 92, 93.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 259, 260, 298 et seq.

4 Am. Jur. Legal Forms 2d, Civil Service § 57:12 (dismissal of civil service employee, notice of intention).

4 Am. Jur. Legal Forms 2d, Civil Service § 57:13 (wrongful discharge of civil service employee, claim for damages).

5A Am. Jur. Pl & Pr Forms (Rev), Civil Service, Forms 21 et seq. (public employee, unlawful dismissal or removal from position).

20A Am. Jur. Pl & Pr Forms (Rev), Public Officers and Employees, Form 32 (petition or application to oust de facto public officer appointed to fill temporary vacancy).

20A Am. Jur. Pl & Pr Forms (Rev), Public Officers and Employees, Forms 91 et seq. (remedies of discharged employees).

CJS. 62 C.J.S., Municipal Corporations §§ 833-835 et seq.

§ 21-31-73. Fixing of rate of compensation.

The fixing of the rate of compensation of every employee coming under the provisions of Sections 21-31-51 through 21-31-75 shall remain vested in those public officials authorized by law to fix the rate of such compensation, and nothing contained in said sections shall infringe upon the power and authority of any such public officials to so fix the rate of such compensation.

SOURCES: Codes, 1942, § 3825-41; Laws, 1944, ch. 209, § 11.

Cross References — Fixing of rate of compensation in certain other municipalities, see § 21-31-25.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 252 et seq.

20A Am. Jur. Pl & Pr Forms (Rev), Public Officers and Employees, Form 11 (complaint, petition, or declaration by public officer to recover compensation).

20A Am. Jur. Pl & Pr Forms (Rev), Public Officers and Employees, Form 12 (complaint, petition, or declaration by public officer against predecessor in office to recover compensation paid predecessor while illegally holding over in office).

CJS. 62 C.J.S., Municipal Corporations

§§ 804-812 et seq.

§ 21-31-75. Political services and contributions.

No person holding any office, place, position or employment subject to civil service, is under any obligation to contribute to any political fund or to render any political service to any person or party whatsoever, and no person shall be removed, reduced in grade or salary, or otherwise prejudiced for refusing so to do. No public officer, whether elected or appointed, shall discharge, promote, demote or in any manner change the official rank, employment or compensation of any person under civil service, or promise or threaten so to do, for giving or withholding, or neglecting to make any contribution of money, or service, or any other valuable thing, for any political purpose. No such employee shall engage in any political campaign as a representative of any candidate or shall engage in pernicious activities, and any person so engaging in such activities shall be subject to dismissal or demotion.

SOURCES: Codes, 1942, § 3825-42; Laws, 1944, ch. 209, § 12.

Cross References — Political services and contributions in certain other municipalities, see § 21-31-27.

JUDICIAL DECISIONS

1. In general.

Phrase "represent candidate" necessarily precludes civil servant from becoming candidate, as he would then be representing himself, for purposes of statute prohibiting civil service employee from engaging in any political campaign as representative of any candidate. Bullock v. Mississippi Emp. Sec. Comm'n, 697 So. 2d 1147 (Miss. 1997), reh'g denied, 697 So. 2d 1191 (Miss. 1997).

Preclearance provisions of Voting Rights Act, requiring preclearance before enforcement of any rules affecting voting rights of citizens, were not applicable to state statutes which were enacted prior to Act; preclearance provisions were not to be applied retroactively. Bullock v. Mississippi Emp. Sec. Comm'n, 697 So. 2d 1147 (Miss. 1997), reh'g denied, 697 So. 2d 1191 (Miss. 1997).

Statute prohibiting civil service employee from engaging in any political campaign as representative of any candidate authorized mayor to fire city administrative employee once he qualified as candidate for municipal elective office. Bullock v. Mississippi Emp. Sec. Comm'n, 697 So. 2d 1147 (Miss. 1997), reh'g denied, 697 So. 2d 1191 (Miss. 1997).

Legislature's intent throughout statute governing political services and contributions is to protect civil service employees, who by nature of their employment are subordinates to elected officials, from being pressured to contribute to any political campaign; reasonable interpretation of this legislative intent prohibits employee from running for office, as well as representing political candidate. Bullock v. Mississippi Emp. Sec. Comm'n, 697 So. 2d 1147 (Miss. 1997), reh'g denied, 697 So. 2d 1191 (Miss. 1997).

City administrative employee who was discharged, pursuant to statute, after having qualified as candidate for municipal elective office was not entitled to unemployment benefits. Bullock v. Mississippi Emp. Sec. Comm'n, 697 So. 2d 1147 (Miss. 1997), reh'g denied, 697 So. 2d 1191 (Miss. 1997).

City employee who was discharged after he qualified as candidate for municipal elective office did not have standing to raise claim that statute prohibiting civil service employee from engaging in political campaign as representative of candidate was unconstitutionally over broad since it encompassed candidates in any city, county, state, or federal election; employee did not argue that statute was unconstitutional as applied to him, but that it might be unconstitutional in other circumstances not involving municipal election. Bullock v. Mississippi Emp. Sec. Comm'n, 697 So. 2d 1147 (Miss. 1997), reh'g denied, 697 So. 2d 1191 (Miss. 1997).

ATTORNEY GENERAL OPINIONS

The Chief of Police must be included in the civil service system of the city of Ocean Springs because the more specific provisions of Miss. Code Ann. § 21-31-13, concerning civil service systems in a handful of described municipalities, control over the more general provisions of Miss. Code Ann. § 21-3-3, which applies to all code charter municipalities in Mississippi. Edwards, March 30, 2007, A.G. Op. #07-00152, 2007 Miss. AG LEXIS 134.

CHAPTER 33

Taxation and Finance

Article 1. Taxation 21-33-1
Article 3. City Utility Tax Law 21-33-201
Article 5. Bonds 21-33-301
Article 7. Municipal Revolving Fund 21-33-401
Article 9. Local Improvement Taxing Districts. [Repealed]

ARTICLE 1.

TAXATION.

SEC.
21-33-1. Date of tax liability.
21-33-3. Municipal tax forms.
21-33-5. Form of land assessment roll.
21-33-7. Form of personal assessment roll.
21-33-9. Manner of municipal assessment.
21-33-10. Corrections or revisions to county assessment roll adopted by municipality; objections to municipal roll; appeal.
21-33-11. Assessment of public utilities and added territory.
21-33-13. Assessment of private car companies.
21-33-15. Assessment of land.
21-33-17. Recapitulation of land roll.
21-33-19. Assessment of personal property.
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21-33-23. Filing of assessments rolls.
21-33-25. Validity of assessment not affected by omissions of assessor.
21-33-27. Correction and revision of municipal assessment roll.
21-33-29. Equalization of assessments.
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21-33-33. Objections to roll.
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21-33-37. Effect of failure to hold meeting for equalization of rolls or for hearing objections thereto.
21-33-39. Appeals of equalizations and assessments.
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21-33-45. Levy of municipal ad valorem taxes.
21-33-47. Certification of tax levy; publishing of same; clerks' liability.
21-33-49. Prescribed tax receipts furnished to tax collector; treatment of real property as to which previous taxes are delinquent; certain tax collector duties and liabilities.
21-33-51. Tax receipts to be given taxpayer.
21-33-53. Duties of tax collector.
21-33-55. Property escaping taxation; assessment.
21-33-57. Property escaping taxation; collection of tax; sale.
21-33-59. Void sales.
21-33-61. Redemption of land sold.
21-33-63. Sale for taxes; sale list.
21-33-65. Sale of land not sold at appointed time.
21-33-67. Recording of conveyances.
21-33-69. Lands struck off to the municipality.

21-33-71. Taxing of lands acquired by municipality.
21-33-73. Municipality may purchase at state and county tax sales.
21-33-75. Sale or lease of land by municipality.
21-33-77. Borrowing on delinquent tax lands.
21-33-79. Refund of erroneously paid taxes.
21-33-81. Surveys and appraisals authorized.
21-33-83. Appeals.
21-33-85. Application of Sections 21-33-1 through 21-33-85.
21-33-87. Tax levy to pay bonds and coupons.
21-33-89. Tax levy for street and cemetery purposes in certain municipalities.
21-33-91. Exemption from municipal ad valorem taxes of certain property constructed, renovated, or improved in central business district.

§ 21-33-1. Date of tax liability.

All lands and other taxable property subject to assessment, held by any person within the municipality, or in added territory, on the first day of January, shall be assessed, and ad valorem taxes thereon levied and collected for the ensuing year, excepting motor vehicles as defined by the "Motor Vehicle Ad Valorem Tax Law of 1958," Sections 27-51-1 through 27-51-49, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 3742-01; Laws, 1938, Ex. Sess., ch. 19; Laws, 1950, ch. 492, § 1; Laws, 1958, ch. 549, § 1.

Cross References — Municipal tax forms, see § 21-33-3.

Right to appeal action of governing authorities of municipalities, see § 21-33-83.

Authorization to appropriate and raise by taxation money to implement municipal airport law, see § 61-5-29.

JUDICIAL DECISIONS

1. In general.

Where a city at the expense of property owners of the city constructed a sewer system and allowed owners of residences outside the city to use the facilities for a charge, these owners could not prevent the city from disconnecting its line from their line at the city limits to enforce the charged levied. Wells v. City of Jackson, 223 Miss. 228, 77 So. 2d 925 (1955).

ATTORNEY GENERAL OPINIONS

A municipality may not correct or revise the county assessment rolls for the purpose of adding omitted property thereto; such an addition is the duty of the county tax assessor. Brand, August 21, 1998, A.G. Op. #98-0494.

A municipality may not, by ordinance, alter any procedures established by state statute for assessment of taxes and valuation of property, or provide that real property which is no longer in an unimproved state continue to be valued and assessed other than for its true value. Hammack, Feb. 17, 2004, A.G. Op. 03-0695.

An annexation is final and effective for all purposes 10 days after issuance of the decree by the chancery court, or 10 days after final determination of an appeal, except that citizens residing in an annexed area may not participate in future municipal elections as electors or as candidates, unless and until pre-clearance by the U.S. Department of Justice is obtained pursuant to Section 5 of the Voting Rights Act. Mallette, March 2, 2007, A.G. Op.

#07-00096, 2007 Miss. AG LEXIS 72, modifying Rafferty, November 27, 2006, A.G. Op. #06-00598, 2006 Miss. AG LEXIS 428, as to the effective date of annexation for all purposes other than voting and candidacy.

RESEARCH REFERENCES

Law Reviews. 1979 Mississippi Supreme Court Review: Miscellaneous. 50 Miss. L. J. 833, December, 1979.

§ 21-33-3. Municipal tax forms.

The state tax commission shall annually prepare forms for the personal property assessment rolls, and each two years, or annually as required, prepare forms for the real property assessment rolls. The forms so prescribed shall be printed, ruled, and headed as to be suitable for their respective purposes and to enable the municipal officers to comply with the tax laws of this state applicable to municipalities. A sample of the forms for the real and personal assessment rolls shall be sent by mail to the mayor and to the clerk of every municipality not later than the first day of October of each year.

The forms shall be so made that the respective municipalities may require such additional information, make such additions and add such further details as permitted by Sections 21-33-1 through 21-33-85, but the general and basic arrangement of such forms shall not be changed.

The municipal authorities shall furnish their respective officers with a sufficient quantity of each of said forms, and may purchase the same or have them printed, as provided by law.

It is the purpose of this section that municipal forms relating to assessment and taxes be generally uniform throughout the state.

SOURCES: Codes, 1942, § 3742-21; Laws, 1938, Ex. Sess., ch. 19; Laws, 1950, ch. 492, § 21, eff from and after July 1, 1950.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 21-33-5. Form of land assessment roll.

The governing authorities of each municipality shall prescribe by order the form of the land assessment roll, adhering to the basic form prescribed by the state tax commission which shall be similar to the form prescribed for and used by county tax assessors for the assessment of municipal lands. When a municipality has added territory, the roll used for the assessment of lands in such added territory shall be generally in the form of the roll used in the assessment of such lands by the county, and be on sheets of the same size.

The land roll shall contain space or columns for the name of the owner, for the name of the subdivision, survey or addition, for block and lot numbers and, if required, for the section, township and range. It shall contain a column to show the value of any buildings, structures or improvements, and separately a column to show the value of the lands, and the total value.

In addition to the columns above specified, the governing authorities may provide columns to show the number of the tax receipt, the amount of ad valorem taxes collected, and the amounts collected for any special improvement or improvements.

Municipalities using accounting machines equipment may adopt such forms as may be required for the use of such equipment, provided that the information required herein is substantially set forth on said forms.

SOURCES: Codes, 1942, § 3742-02; Laws, 1938, Ex. Sess., ch. 19; Laws, 1950, ch. 492, § 2, eff from and after July 1, 1950.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

ATTORNEY GENERAL OPINIONS

The board of mayor and aldermen of a city is without the authority to appoint an "acting" commissioner to serve during the pendency of an appeal of the Circuit Court's decision regarding recusal of a civil service commissioner. Thomas, July 1, 2004, A.G. Op. 04-0277.

§ 21-33-7. Form of personal assessment roll.

The governing authorities of each municipality shall prescribe by order the form of the personal assessment roll, which shall generally be in the form prescribed for and used by the counties for the assessment of personal property. Additional columns may be provided if deemed convenient and necessary.

SOURCES: Codes, 1942, § 3742-11; Laws, 1938, Ex. Sess., ch. 19; Laws, 1950, ch. 492, § 11, eff from and after July 1, 1950.

ATTORNEY GENERAL OPINIONS

If the board of aldermen wishes not to go forward with an election on the issuance of bonds, the board in its discretion may state that intention in the minutes or may take no further action. Tanner, Feb. 14, 2003, A.G. Op. #03-0039.

Where a petition has been filed, the board may not issue bonds unless the board holds an election as required by Section 21-33-307. Tanner, Feb. 14, 2003, A.G. Op. #03-0039.

If the board votes to hold an election on the issuance of bonds, the mayor may veto that official action. Tanner, Feb. 14, 2003, A.G. Op. #03-0039.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 628-633.

CJS. 84 C.J.S., Taxation §§ 506-509, 524, 525, 582.

§ 21-33-9. Manner of municipal assessment.

The assessment of all real and personal property in any municipality subject to taxation, except such property as is required by law to be assessed by the state railroad assessors, shall be made by the municipal assessor, by one (1) of the following methods:

(a) The governing authorities of any municipality may provide that the assessor shall copy from the county assessment rolls of real and personal property, that portion of the assessment rolls which embraces property, or persons, within the municipality. The copy may be made at any time after the county assessment rolls are filed with the clerk of the board of supervisors, by the county tax assessor.

(b) The governing authorities of any municipality may provide for a separate assessment to be made each year, by its assessor, of all taxable personal property, and each year, or each two (2) years, of all taxable real property, including buildings, improvements, structures or other interests therein.

If the governing authorities provide for a separate assessment by the assessor, as provided by paragraph (b) above, the assessor shall use tax lists for both real and personal property generally the same as the tax lists prescribed for county assessors.

(c) Notwithstanding the provisions of paragraphs (a) and (b) to the contrary, the governing authorities of any municipality which is located within a county having completed a countywide reappraisal approved by the state tax commission and which has been furnished a true copy of that part of the county assessment roll containing the property located within the municipality as provided in Section 27-35-167 shall adopt such assessment roll for its assessment purposes.

SOURCES: Codes, 1942, § 3742-03; Laws, 1938, Ex. Sess., ch. 19; Laws, 1950, ch. 492, § 3; Laws, 1983, ch. 471, § 1, eff from and after July 1, 1983.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Corrections or revisions of assessment roll adopted pursuant to this section, see § 21-33-10.

Filing of assessment rolls, see § 21-33-23.

Levying municipal ad valorem taxes, see § 21-33-45.

Assessment of property previously escaping taxation, see § 21-33-55.

Provisions of municipal budget law, see §§ 21-35-1 et seq.

Homestead exemption of homes in municipalities, see § 27-33-25.

JUDICIAL DECISIONS

1. In general.

In an action challenging the validity of certain construction and renovation general obligation school bonds, the filing of a certified copy of the resolution adopted by the school district's board of trustees with the governing authority of the municipality fulfilled the requirement of § 37-59-11, even though the incorporation in full of the resolution in the minutes of the governing authority would have been the better practice; nor did the assessment of property for taxes pursuant to § 21-33-9 violate the Mississippi Constitution, art. 4, § 112, where the assessment was not void on its face and where there was nothing showing that the orders of the municipality's governing body or the orders of the county board of supervisors in approving the assessments were void. Walters v. Validation of $3,750,000.00 Sch. Bonds of Petal Mun. Separate Sch. Dist., 364 So. 2d 274 (Miss. 1978).

ATTORNEY GENERAL OPINIONS

A municipality may not correct or revise the county assessment rolls for the purpose of adding omitted property thereto; such an addition is the duty of the county tax assessor. Brand, August 21, 1998, A.G. Op. #98-0494.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 604, 605 et seq.

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Forms 1 et seq. (remedies for wrongful taxation).

CJS. 84 C.J.S., Taxation §§ 464, 530-613.

§ 21-33-10. Corrections or revisions to county assessment roll adopted by municipality; objections to municipal roll; appeal.

The governing authority of any municipality which adopts the part of the county assessment roll containing the property located within the municipality as provided in Sections 21-33-9 and 27-35-167 shall not correct or revise such assessment roll except for the purpose of conforming the municipal assessment roll to corrections or revisions made to the county assessment roll. The governing authority of such municipality shall not meet to hear objections to the assessment roll. All objections to the municipal assessment roll shall be heard by the board of supervisors at the time and in the manner that objections to the county assessment roll are heard. The board of supervisors shall notify, in writing, the municipal governing authority and the municipal tax assessor of any corrections or revisions made by them to the part of the county assessment roll adopted as the municipal assessment roll. Any taxpayer feeling aggrieved at the action of the board of supervisors in equalizing his assessments shall have the right to appeal to the circuit court as provided in Section 27-35-119.

SOURCES: Laws, 1983, ch. 471, § 2, eff from and after July 1, 1983.

Cross References — Correction and revision of municipal land assessment roll, see § 21-33-27.

Equalization of assessments, see § 21-33-29.

Objections to real and personal property assessment rolls, see § 21-33-33.

Effect of failure to hold meeting for equalization of rolls or for hearing objections thereto, see § 21-33-37.

Change of assessments, see § 21-33-43.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 604, 605 et seq.

§ 21-33-11. Assessment of public utilities and added territory.

The municipal assessment of railroad property, and other property required by law to be assessed by the state railroad assessors, shall be made by the assessor by copying from the assessment roll of such property, filed with the clerk of the board of supervisors, the assessment of all the property situated inside the municipality. Where any municipality has added territory, the assessor shall likewise copy, from the roll filed with the clerk of the board of supervisors, the assessment of all the property situated within such added territory constituting, with a municipality, a separate school district. The assessment so copied shall be the legal assessment for the municipality, and the municipal separate school district, and, when certified by the clerk and placed in the hands of the municipal tax collector, shall be his warrant for the collection of municipal and separate school district ad valorem taxes.

The governing authorities of any municipality may present to the state assessors of railroads orally or in writing at any time before the assessment is made, information with respect to the property owned by any public utility, its value and the assessment of same.

SOURCES: Codes, 1942, § 3742-04; Laws, 1938, Ex. Sess., ch. 19; Laws, 1950, ch. 492, § 4, eff from and after July 1, 1950.

Cross References — Assessment of property previously escaping taxation, see § 21-33-55.

JUDICIAL DECISIONS

1. In General.

The adoption of a rule that property in a territory added to a municipal separate school district and lying outside the municipality should be assessed differently than property lying within the municipality would result in a constitutionally impermissible lack of uniformity and equality, despite the contention that § 21-33-11 provided the exclusive method for the assessment for school taxes of such lands and that assessments appearing on the county assessment rolls were conclusive upon the municipal taxing authorities. Thompson v. Anding, 370 So. 2d 1335 (Miss. 1979).

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 353-357.

CJS. 84 C.J.S., Taxation §§ 566-569, 571-575.

§ 21-33-13. Assessment of private car companies.

The clerk, or tax collector, of every municipality shall copy from the roll or schedule filed with the clerk of the board of supervisors by the state tax commission the assessment of private car companies, and he shall determine the amount by taking the number of miles of each railroad over which the cars of any company, traveled through the respective municipalities, and the number of miles of each railroad over which the cars of any such company traveled which lies in any separate, adjacent, annexed territory constituting with a municipality a separate school district. He shall copy the assessed value per mile of each company over any railroad or railroads, operating through such municipality and separate, adjacent, annexed territory, and shall determine the assessment of each company by multiplying the valuation of each company apportioned to each mile of railroad by the number of miles of railroad over which the cars of any such company have traveled lying in such municipality or separate, adjacent, annexed territory. The assessment so determined, plus the value of any other property assessed, shall constitute the assessment of the property of the respective companies within the municipality and in the separate, adjacent, annexed territory constituting a separate school district. All such copies and assessments made as herein provided shall be placed in the hands of the municipal tax collector and be his warrant for the collection of municipal and separate school district taxes.

SOURCES: Codes, 1942, § 3742-05; Laws, 1950, ch. 492, § 5, eff from and after July 1, 1950.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — County assessment of such companies, see § 27-35-309.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 634-641.

CJS. 84 C.J.S., Taxation §§ 464, 530-613.

§ 21-33-15. Assessment of land.

The assessor shall assess all the lands in the municipality which he serves, and all the land in any separate territory outside the municipality, but in the separate school district. He shall enter the assessments on the roll and he shall commence the assessment with the lowest number of squares or blocks and lots or other subdivisions, and proceeding in numerical order with all the lots in a square or block, and all the squares in the municipality, until complete. Any lands not platted, and not divided into lots, shall be assessed according to the section, township, and range, in the same manner as required of the county tax assessor.

SOURCES: Codes, 1942, § 3742-06; Laws, 1950, ch. 492, § 6, eff from and after July 1, 1950.

Cross References — Filing of assessment rolls, see § 21-33-23.

§ 21-33-17. Recapitulation of land roll.

The assessor shall correctly add, and show the total of each and every column on each page in the land roll, and shall carry the result thereof to the recapitulation on a page, or pages, in the back of the roll, and shall show in the recapitulation the total assessment of land in the municipality, including all elements of value thereof. He shall show in the recapitulation the total of each and every column in the entire roll.

If the municipality has added territory, the assessor shall, on separate pages, make an assessment of said lands and a recapitulation thereof, in the manner provided for recapitulations of the county assessment roll. He shall then make a grand recapitulation, showing all the above enumerated totals, separately, for the municipality, the added territory, and for the entire separate school district.

SOURCES: Codes, 1942, § 3742-09; Laws, 1938, Ex. Sess., ch. 19; Laws, 1950, ch. 492, § 9, eff from and after July 1, 1950.

Cross References — Assessment of personal property, see § 21-33-19.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 604, 605, 642-647.

CJS. 84 C.J.S., Taxation §§ 568-576, 602, 603, 664.

§ 21-33-19. Assessment of personal property.

The assessor shall make the personal roll at the same time and in the same manner that the land roll is made, except that it shall be made annually. He shall make a recapitulation thereof as is required for the land roll.

SOURCES: Codes, 1942, § 3742-11; Laws, 1938, Ex. Sess., ch. 19; Laws, 1950, ch. 492, § 11, eff from and after July 1, 1950.

Cross References — Form of personal assessment roll, see § 21-33-7.
Assessment of real estate, see §§ 21-33-17, 21-33-27.

RESEARCH REFERENCES

ALR. Situs of tangible personal property for purposes of property taxation. 2 A.L.R.4th 432.

§ 21-33-21. Assessment of property in added territory.

The assessor shall, in the same manner and at the same time as municipal assessments are made, make an assessment of all taxable property in any added territory, and make the same a part of the assessment roll of the municipal separate school district.

SOURCES: Codes, 1942, § 3742-22; Laws, 1938, Ex. Sess., ch. 19; Laws, 1950, ch. 492, § 22, eff from and after July 1, 1950.

JUDICIAL DECISIONS

1. In general.

The adoption of a rule that property in a territory added to a municipal separate school district and lying outside the municipality should be assessed differently than property lying within the municipality would result in a constitutionally impermissible lack of uniformity and equality, despite the contention that § 21-33-11 provided the exclusive method for the assessment for school taxes of such lands and that assessments appearing on the county assessment rolls were conclusive upon the municipal taxing authorities. Thompson v. Anding, 370 So. 2d 1335 (Miss. 1979).

RESEARCH REFERENCES

Law Reviews. 1979 Mississippi Supreme Court Review: Miscellaneous. 50 Miss. L. J. 833, December, 1979.

§ 21-33-23. Filing of assessments rolls.

The assessor shall complete the assessment of both real and personal property and file the rolls with the municipal clerk on or before the first Monday in September. The governing authorities may, by an order entered upon their minutes, allow the assessor additional time within which to complete and file the assessment rolls. The assessor shall attach his affidavit to each roll in the form required of the county tax assessor.

Municipalities operating under a private charter, and having a different time for the assessment of property than fixed for municipalities operating under a code charter, shall provide the time when the assessor shall make and file the assessment rolls.

SOURCES: Codes, 1942, §§ 3742-03, 3742-06; Laws, 1938, Ex. Sess., ch. 19; Laws, 1950, ch. 492, §§ 3, 6, eff from and after July 1, 1950.

Cross References — Manner of municipal assessment, see § 21-33-9.
Assessment of property previously escaping taxation, see § 21-33-55.
Provisions of municipal budget law, see §§ 21-35-1 et seq.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 628.
CJS. 84 C.J.S., Taxation § 684.

§ 21-33-25. Validity of assessment not affected by omissions of assessor.

The failure of the assessor to certify and swear to his assessment roll, or to return it on the day named for its return, or his failure to do any other act with respect to the roll, shall not affect the validity of the assessment, if it is corrected, revised, and approved by the municipal authorities.

SOURCES: Codes, 1942, § 3742-07; Laws, 1950, ch. 492, § 7, eff from and after July 1, 1950.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 611.
CJS. 84 C.J.S., Taxation § 672.

§ 21-33-27. Correction and revision of municipal assessment roll.

Except as otherwise provided in Section 21-33-10, it shall be the duty of the governing authorities of each municipality to correct and revise the municipal land assessment roll, including land in any added territory, in the same manner as is required of boards of supervisors in correcting and revising the county land assessment roll, as provided by general law. The clerk shall assist the governing authorities of the municipality in the revision, correction and preparation of the assessment roll, and shall do any and all things in connection therewith, and shall perform the same duties with respect to said roll as is generally required of the clerk of the board of supervisors in making the county land assessment roll.

All of the aforesaid provisions relating to the correcting and revising of the land roll shall apply to the correcting and revising of the personal roll, so far as applicable.

SOURCES: Codes, 1942, §§ 3742-10, 3742-11: Laws, 1938, Ex. Sess., ch. 19; Laws, 1950, ch. 492, § 10; Laws, 1983, ch. 471, § 3, eff from and after July 1,1983.

Cross References — Form of personal assessment roll, see § 21-33-7.
Correction or revision of that part of county assessment roll adopted by municipality, see § 21-33-10.
Homestead exemptions, see §§ 27-33-1 et seq.

JUDICIAL DECISIONS

1. In general.

Changes made in an assessment roll at a meeting to correct and equalize the roll, by substituting for presumed owner's name "persons unknown" and by making description of the property more specific, did not invalidate the assessment. Rayborn v. Burt, 234 Miss. 763, 107 So. 2d 737 (1959), error overruled 234 Miss. 763, 108 So. 2d 588.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 611.

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Forms 1 et seq. (remedies for wrongful property taxation).

CJS. 84 C.J.S., Taxation §§ 759-782, 801, 805, 853-858.

§ 21-33-29. Equalization of assessments.

Except as otherwise provided in Section 21-33-10, the governing authorities of every municipality shall, at a regular or special meeting to be held in September or October in each year (unless a different time be fixed by order), receive the assessment rolls of real and personal property from the assessor and shall proceed to change, correct, revise, and equalize said assessments in the same manner and with the same powers as is provided for the equalization of assessments by county boards of supervisors. When the equalization has been completed, the governing authorities shall give ten (10) days' notice of the regular or special meeting at which objections to such assessments will be heard. The Notice shall be given by publication at least one (1) time in a legal newspaper, if there be one published in the municipality, and if no such newspaper be published in the municipality, the notice shall be given by posting written notices thereof in five (5) or more public places in the municipality.

SOURCES: Codes, 1942, § 3742-12; Laws, 1938, Ex. Sess., ch. 19; Laws, 1950, ch. 492, § 12; Laws, 1983, ch. 471, § 4, eff from and after July 1, 1983.

Cross References — Correction or revision of that part of county assessment roll adopted by municipality, see § 21-33-10.

Objections to real and personal property assessment rolls, see § 21-33-33.

Hearings on objections to real and personal rolls, see § 21-33-33.

Effect of failure to hold meeting for equalization of assessments, see § 21-33-37.

Assessment schedule used in taxing motor vehicles, see § 27-51-21.

JUDICIAL DECISIONS

1. In general.

In a taxpayer's suit attacking the validity of a contract between the city and company for professional services by the company in making a detailed appraisal and valuation study of all properties in the city including its replacement, physical and other values, if the taxpayers were aggrieved by tax assessments affecting their property, based upon valuations made by the city assessor under the contract, they should have sought relief by filing objections with the mayor and the board of aldermen and by appealing from such assessments in the manner provided by the statute. Alexander v. Mayor of City of Natchez, 219 Miss. 78, 68 So. 2d 434 (1953), motion overruled on other grounds, 220 Miss. 207, 70 So. 2d 529 (1954).

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 685, 701, 710.

22 Am. Jur. Pl & Pr Forms, (Rev), State and Local Taxation, Forms 1, 2 (petition or application to correct assessment roll).

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Form 16 (complaint, petition, or declaration of allegation of failure of administrative agency to hold hearing for equalization of assessments).

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Form 23 (complaint, petition, or declaration of allegation of assessor's failure to notify taxpayers of increased assessments).

CJS. 84 C.J.S., Taxation §§ 700-703, 758.

§ 21-33-31. Rolls approved upon completion of equalization.

The governing authorities, upon completion of the equalization, correction and revision of the assessment roll or rolls, shall enter an order approving the rolls and the assessments therein contained, subject to the right of parties in interest to be heard on objections. The order adopted, approving the rolls and the assessment, shall state the total assessment of the land roll and separately of the personal roll, but this shall not be required in the case of towns and villages.

SOURCES: Codes, 1942, § 3742-13; Laws, 1938, Ex. Sess., ch. 19; Laws, 1950, ch. 492, § 13, eff from and after July 1, 1950.

Cross References — Appeals from finalization of property assessments, see § 21-33-39.

§ 21-33-33. Objections to roll.

Except as otherwise provided in Section 21-33-10, the governing authorities of each municipality shall hold a meeting at the city hall, or at such other place as their regular meetings are held, on the date specified in the notice required by Section 21-33-29, to hear objections to the real and personal rolls and the assessments therein contained. The governing authorities shall hear and determine all objections, and shall sit from day to day until the same shall have been disposed of, and all proper corrections made. The proceedings shall, in all respects, conform to the requirements of law governing such meetings of the county board of supervisors.

SOURCES: Codes, 1942, § 3742-14; Laws, 1938, Ex. Sess., ch. 19; Laws, 1950, ch. 492, § 14; Laws, 1983, ch. 471, § 5, eff from and after July 1, 1983.

Cross References — Objections to municipal assessment roll adopted from county assessment roll, see § 21-33-10.

Effect of failure to hold meeting for hearing objections to real and personal property assessment rolls, see § 21-33-37.

Methods of publishing notice, see § 21-41-51.

Filing and disposition of objections to assessment schedule for taxes on motor vehicles, see § 27-51-23.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 669-674, 681-684.

17 Am. Jur. Legal Forms 2d (Rev), State and Local Taxation § 238:46 (application by taxpayer-affidavit for tax abatement or refund).

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Forms 131 et seq. (exemptions from taxation of charitable, religious, educational, and other nonprofit institutions).

CJS. 84 C.J.S., Taxation § 786.

§ 21-33-35. Rolls approved after objections heard.

The governing authorities, after having heard and determined all objections to the assessment roll, or rolls, and the assessments therein contained, shall approve the same by an order entered on the minutes. Such order shall state the grand total of the personal roll and the grand total of the land roll. In the event the municipality has added territory, the order shall recite, separately, the above totals for the municipality, for the added territory, and the grand total for the separate school district.

SOURCES: Codes, 1942, § 3742-15; Laws, 1938, Ex. Sess., ch. 19; Laws, 1950, ch. 492, § 15, eff from and after July 1, 1950.

Cross References — Objections to municipal assessment roll adopted from county assessment roll, see § 21-33-10.

Appeals from finalization of property assessments, see § 21-33-39.

Power of governing authorities to change assessments after rolls have been finally approved, see § 21-33-43.

JUDICIAL DECISIONS

1. In general.

Provisions requiring municipal authorities to state totals and grand totals of land and personal property rolls, in orders approving and accepting such rolls, are directory rather than mandatory, and alleged failure to comply with such provisions did not render an individual municipal tax sale void. Arnold v. Sellers, 252 So. 2d 889 (Miss. 1971).

§ 21-33-37. Effect of failure to hold meeting for equalization of rolls or for hearing objections thereto.

Except as otherwise provided in Section 21-33-10, if the board of municipal authorities shall fail to hold any meeting for the equalization of assessment rolls or for hearing objections to assessments or if the board fails to give the proper notice to the taxpayers, it shall immediately proceed to give the required notice and to hold the necessary meetings and do the necessary things in connection with the completion of the assessment roll. When the notice has been given as required by law, the board shall proceed to deal with the rolls with all the powers and duties as are now prescribed by law, except as to the time. If the board fails to hold any meeting, or give any notice, or to perform any other duty in reference to the assessment rolls, at the time required by law, such duty shall be performed at a later date upon the giving of legal and proper notice to the persons affected.

SOURCES: Codes, 1942, § 3742-08; Laws, 1950, ch. 492, § 8; Laws, 1983, ch. 471, § 6, eff from and after July 1, 1983.

Cross References — Objections to municipal assessment roll adopted from county assessment roll, see § 21-33-10.

Methods of publishing notice, see § 21-41-51.

§ 21-33-39. Appeals of equalizations and assessments.

Any taxpayer, or any person owning or having a legal interest in any property, feeling aggrieved at the action of the governing authorities in equalizing and making final assessments, shall have the right of appeal to the circuit court in the manner provided by Section 11-51-77, Mississippi Code of 1972, within twenty days after the adjournment of the meeting of the said governing authorities at which the final approval of the assessment roll is entered on the minutes.

SOURCES: Codes, 1942, § 3742-17; Laws, 1938, Ex. Sess., ch. 19; Laws, 1950, ch. 492, § 17, eff from and after July 1, 1950.

Cross References — Rights of appeal to circuit court in matters of tax assessments, see § 11-51-77.

Taxpayers' right of appeal generally, see § 21-33-83.

Objections to assessment schedule for taxes on motor vehicles, see § 27-51-23.

Objections to municipal motor vehicle assessment schedule, see § 27-51-39.

JUDICIAL DECISIONS

1. In general.

A taxpayer action challenging the assessment of property added to a municipal separate school district and lying outside the municipality could not be maintained as a class action where the claims of the purported class members related to individually owned parcels of real estate separate and distinct from each other; the remedy of each of these persons, as landowners, was by exercising the statutory right of appeal. Thompson v. Anding, 370 So. 2d 1335 (Miss. 1979).

In a taxpayer's suit attacking the validity of a contract between the city and company for professional services by the company in making a detailed appraisal and valuation study of all properties in the city including its replacement, physical and other values, if the taxpayers were aggrieved by tax assessments affecting their property which was based upon valuations made by the city assessor under the contract they should have sought relief by filing objections with the mayor and the board of aldermen and by appealing from such assessments in the manner provided by the statute. Alexander v. Mayor of City of Natchez, 219 Miss. 78, 68 So. 2d 434 (1953), motion overruled on other grounds, 220 Miss. 207, 70 So. 2d 529 (1954).

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 969, 700.

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Forms 1 et seq. (Remedies for wrongful property taxation).

CJS. 84 C.J.S., Taxation §§ 783-959.

§ 21-33-41. Clerk to make copy of rolls.

When the roll is finally completed by the governing authorities of the municipality, in accordance with law, the clerk shall make a true and correct copy of each roll, including the assessment of property in any added territory, and the original shall be retained and carefully preserved by him as a public record in his office. The clerk shall make the proper extensions of the total amount of property assessed to every taxpayer, and the total assessment of each parcel or tract of land, both within the municipality and in the added territory, if there be any. The clerk shall add truly and correctly every page of the copy, and carry the results thereof to the recapitulation, and he shall add said recapitulation and attach his certificate to the roll, or rolls, verifying the truth and correctness of all calculations and entries in the copy. The copy of the assessment rolls, of both real and personal property, as hereby provided, shall be placed in the hands of the tax collector and be his warrant for the collection of municipal and separate school district ad valorem taxes.

SOURCES: Codes, 1942, § 3742-16; Laws, 1938, Ex. Sess., ch. 19; Laws, 1950, ch. 492, § 16, eff from and after July 1, 1950.

§ 21-33-43. Change of assessments.

Except as otherwise provided in Section 21-33-10, the governing authorities of any municipality shall have the power to change assessments, after the assessment roll, or rolls, of real and personal property have been finally approved, but not after the expiration of the fiscal year in which the taxes on said assessments are due and payable. The assessments may be reduced or increased for the same reasons and in like manner, as provided by law for the reduction and/or increasing of county assessments. Such change shall not be submitted to the state tax commission for approval.

Where a reduction is sought, the governing authorities shall require the owner of the property, or his duly authorized agent or attorney, to make a suitable application or petition, and where an increase is sought the application or petition shall be made by the assessor. The governing authorities shall have the right and power to consider the application or petition and to do any and all things necessary to determine whether or not it shall be allowed, and shall adopt an order rejecting or approving the application or petition. Said authorities may adopt an order to change the assessment so as to increase or decrease the assessment to the fair value of the property, or to cause the taxes to be charged to the person or property liable therefor.

The clerk shall carefully file and preserve, as a public record, in his office, all petitions or applications, and exhibits thereto, for either an increase or decrease in assessments as herein provided, for a period of three (3) years after the expiration of the fiscal year in which such petitions or applications were filed.

SOURCES: Codes, 1942, § 3742-20; Laws, 1938, Ex. Sess., ch. 19; Laws, 1950, ch. 492, § 20; Laws, 1983, ch. 471, § 7, eff from and after July 1, 1983.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Corrections or revisions to that part of county assessment roll adopted by municipality, see § 21-33-10.

Changes in county assessments, see §§ 27-35-143 et seq.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 681-711.

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Forms 1 et seq. (Remedies for wrongful property taxation).

CJS. 84 C.J.S., Taxation §§ 808, 815-823, 851, 853-858.

§ 21-33-45. Levy of municipal ad valorem taxes.

The governing authorities of each municipality of this state shall, either at their regular meeting in September of each year or not later than ten (10) days after the final approval of the assessment rolls, levy the municipal ad valorem taxes for the fiscal year next succeeding, and shall, by resolution, fix the tax rate or levy for the municipality and for any other taxing districts of which the municipality may be a part. The rates or levies for the municipality or for any such taxing district shall be expressed in mills or a decimal fraction of a mill, which tax rates, or levies, shall determine the ad valorem taxes to be collected upon each dollar of valuation upon the assessment rolls of the municipality for municipal taxes, and to be collected upon each dollar of valuation as shown upon the assessment rolls of the municipality for each such taxing district, except as to such values as may be exempt, in whole or in part, from certain tax rates or levies. If the rates or levies for the municipality or taxing district are an increase from the previous fiscal year, then the proposed rate or levy increase shall be advertised in accordance with Section 27-39-203.

In making the levy of taxes, the governing authorities shall specify in such resolution the levy for each purpose as follows:

(a) For general revenue purposes and for general improvements, as authorized by Section 27-39-307.

(b) For school purposes, including all maintenance levies, whether made against the property within such municipality, or within any taxing district embraced in such municipality, as authorized by Section 27-39-307 and Section 37-57-3 et seq.

(c) For municipal bonds and interest thereon, for school bonds and interest thereon, separately for municipal-wide bonds and for the bonds of each school district.

(d) For municipal-wide bonds and interest thereon, other than for school bonds.

(e) For loans, notes or any other obligation, and the interest thereon, if permitted by law.

(f) For special improvement or special benefit levies, as now authorized by law.

(g) For any other purpose for which a levy is lawfully made. If any municipal-wide levy is made for any general or special purpose under the provisions of any law other than Section 27-39-307 each such levy shall be separately stated in the resolution, and the law authorizing same shall be expressly stated therein.

If the governing authorities of any municipality shall not levy the municipal taxes and the district taxes at its regular September meeting, such governing authorities shall levy the same at an adjourned or special meeting not later than ten (10) days after the final approval of the assessment rolls. However, that if such levy be not made on or before September 15 then road and bridge privilege tax license plates may be issued by the tax collector or Department of Revenue, as the case may be, for motor vehicles as defined in the Motor Vehicle Ad Valorem Tax Law of 1958 (Section 27-51-1 et seq.), without collecting or requiring proof of payment of municipal ad valorem taxes until such levy is duly certified to him, and for twenty-four (24) hours thereafter.

In the case of a municipality operating under a special or private charter providing for or authorizing the assessment, levying and collection of ad valorem taxes prior to October in each year, ad valorem taxes for such municipality shall be levied at the time prescribed or authorized by such special or private charter, unless the governing authority of such municipality by resolution adopted and spread of record in its minutes elect to levy ad valorem taxes at the time prescribed hereinbefore in this section. In any event, however, all ad valorem taxes levied by any municipality in this state, shall be levied in the manner required herein regardless of the time when such taxes are levied.

SOURCES: Codes, 1942, §§ 3742-23, 3742-25; Laws, 1938, Ex. Sess., ch. 19; Laws, 1950, ch. 492, §§ 23, 25; Laws, 1958, ch. 549, § 2; Laws, 1983, ch. 471, § 8; Laws, 1994, ch. 414, § 5; Laws, 2012, ch. 352, § 2, eff from and after July 1, 2012.

Editor's Note — Section 37-57-3 et seq. referred to in (b) was repealed by Laws of 1986, ch. 492, § 189, eff from and after July 1, 1987.

Laws of 1994, ch. 414, § 11, provides as follows:

"SECTION 11. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Increasing tax levy to pay for extending fire protection, see § 21-25-27.

Municipal assessment of all taxable real and personal property, see § 21-33-9.

Certification of tax levy, see § 21-33-47.

Levying taxes to pay bonds and coupons, see § 21-33-87.

Municipal tax levy for general revenue and improvements, see § 27-39-307.

When and how county taxes are levied, see § 27-39-317.

JUDICIAL DECISIONS

1. In general.

A city ordinance which would in effect rebate ad valorem property taxes to the elderly and disabled for the tax year of 1982 was repugnant to both statutory law and the Mississippi Constitution, and the ordinance was an ultra vires act beyond the authority of the city to enact. City of Jackson v. Pittman, 484 So. 2d 998 (Miss. 1986).

ATTORNEY GENERAL OPINIONS

A county board of supervisors is not authorized to modify or amend the millage for the fiscal year once that has been duly and properly established by the governing authority. Hatcher, Dec. 28, 1999, A.G. Op. #99-0660.

The millage rate is "duly and properly established" at the time the resolution or ordinance is signed by the mayor. Strahan, Oct. 8, 2002, A.G. Op. #02-0609.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 604, 605.

CJS. 84 C.J.S., Taxation §§ 467-472, 534.

§ 21-33-47. Certification of tax levy; publishing of same; clerks' liability.

(1) When the governing authorities of any municipality shall have made the levy of municipal taxes by resolution, or for any other taxing district of which the municipality is a part by resolution, the clerk of the municipality shall thereupon immediately certify the same to the tax collector of the municipality, or such other taxing district of which the municipality may be a part.

(2) When a resolution levying ad valorem taxes has been finally adopted by the governing authorities of any municipality embracing, in whole or in part, any other taxing district of which such municipality is a part, the clerk of such municipality shall immediately certify a copy of such resolution to the State Tax Commission, as the law directs. The clerk shall have the resolution

of the governing authorities making the levy printed within two (2) weeks after it is entered on the minutes of such governing authorities, and he shall furnish any taxpayer with a copy thereof, upon request. If a newspaper is published within such municipality, then such resolution shall be published in its entirety, at least one, within ten (10) days after its adoption. Instead of publishing the resolution in its entirety, the publication of the resolution may be made as provided in Section 21-17-19. If no newspaper be published within such municipality, then a copy of such resolution, in its entirety, shall be posted by such municipal clerk in at least three (3) public places in such municipality, within ten (10) days after its adoption.

(3) The clerk shall be liable on his bond for any damages sustained by his failure to comply with the requirements of this section. However, failure to thus publish or post the same shall not affect the validity of the levy.

SOURCES: Codes, 1942, §§ 3742-24, 3742-25; Laws, 1950, ch. 492, §§ 24, 25; Laws, 1988, ch. 457, § 5; Laws, 1994, ch. 414, § 6; Laws, 2009, ch. 546, § 4, eff from and after passage (approved Apr. 15, 2009.)

Editor's Note — Laws of 1994, ch. 414, § 11, provides as follows:

"SECTION 11. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Levy of municipal ad valorem taxes, see § 21-33-45.

Methods of publishing notice, see § 21-41-51.

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

Am Jur. 18A Am. Jur. Pl & Pr Forms (Rev), Notice, Form 1 (notice, general form).

18A Am. Jur. Pl & Pr Forms (Rev), Notice, Forms 24, 25 (affidavit of notice by posting or publication).

1 Am. Jur. Proof of Facts 297, Advertisements.

§ 21-33-49. Prescribed tax receipts furnished to tax collector; treatment of real property as to which previous taxes are delinquent; certain tax collector duties and liabilities.

(1) The governing authorities of each municipality shall furnish their tax collector a sufficient number of tax receipts, in books, printed in triplicate, in blank form, numbered serially by the printer. The clerk shall first make a record of all such receipts by numbers, and shall take the tax collector's receipt therefor, and shall thereafter, at the end of the fiscal year, credit the tax collector with all unused receipts.

Such tax receipts shall be prepared and printed so as to show the total assessment of the property on which the taxes are collected, together with a description of the property, the line and page of the assessment roll where the assessment is listed, and the amount, if any, shown as a home exemption, if the property be an exempt home. They shall show the rate of levy, separately for general current expenses and maintenance taxes, for school maintenance taxes, for bonds, interest, notes or other obligations, and the total tax levy, and the total amount of all taxes received. If the property described in the receipt be an exempt home, there shall be shown the additional amount of taxes which would have been collected had the home not been exempt, which additional amount shall be separately stated.

The said tax receipts may contain such other and additional statements as the governing authorities of the municipality may prescribe and shall generally comply with the requirements of Sections 27-41-1 through 27-41-89, Mississippi Code of 1972, governing the installment payment of taxes.

(2) As to any real property on which taxes for any previous year were not paid, the tax collector shall give notice of the delinquent taxes by stamping on the current tax receipt the fact that previous taxes are delinquent. The tax collector shall not accept payment of current year taxes for real property which has sold for delinquent taxes until the taxpayer provides the tax collector with proof that the tax sales for such real property for the previous two (2) years have been redeemed in the chancery clerk's office. Failure of the tax collector to stamp tax receipts shall not void any tax sale. The tax collector shall have no liability for errors made in complying with the provisions of this subsection if such tax collector makes a good faith effort to comply with such provisions.

SOURCES: Codes, 1942, § 3742-18; Laws, 1938, Ex. Sess., ch. 19; Laws, 1950, ch. 492, § 18; Laws, 1984, ch. 375, § 1; Laws, 1993, ch. 360, § 2, eff from and after October 1, 1993.

Cross References — Tax receipts given taxpayer, see § 21-33-51.
Comparable provisions for counties, see §§ 27-41-29, 27-41-33.

§ 21-33-51. Tax receipts to be given taxpayer.

The tax collector shall give to everyone paying taxes a signed receipt, dated, numbered and filled in so as to show by whom, and on what, taxes were paid, and conforming to the requirements of Section 21-33-49.

SOURCES: Codes, 1942, § 3742-19; Laws, 1938, Ex. Sess., ch. 19; Laws, 1950, ch. 492, § 19, eff from and after July 1, 1950.

Cross References — Comparable provisions for counties, see §§ 27-41-31, 27-41-35.

§ 21-33-53. Duties of tax collector.

The tax collector shall collect municipal taxes during the time and in the same manner and under the same penalties as the state and county taxes are collected. He shall, where not otherwise provided, in all particulars be governed by the general revenue laws of the state, so far as applicable, in making such collections. He shall make the reports thereby required to the governing authorities. He shall receive only such commissions or compensations as may be allowed by ordinance. In no case shall he retain any commissions or compensations from his collections, but the full amount of such collections shall be paid to the municipal treasurer or depository, and his commissions or compensations shall thereafter be paid by allowance thereof by the governing authorities of the municipality, and the issuance of warrants, as in other cases.

SOURCES: Codes, 1892, §§ 2998, 3021; 1906, §§ 3395, 3424; Hemingway's 1917, §§ 5923, 5983; 1930, §§ 2532, 2584; 1942, §§ 3374-101, 3742-31; Laws, 1950, ch. 492, § 31, eff from and after July 1, 1950.

Cross References — Municipal tax collector's duties with respect to licensing of flea market vendors, see § 27-17-162.

Duty of tax collector to give each taxpayer a tax receipt, see § 21-33-51.

When taxes are due, payable and collectible, see §§ 27-41-1 et seq.

Tax collectors enforcing payment, see § 27-41-11.

County tax collector assessing and collecting certain taxes on unassessed property, see § 27-41-19.

County tax collector collecting motor vehicle ad valorem taxes for municipality, see § 27-51-29.

Municipal depositories, see §§ 27-105-301 et seq.

Tax collector's duty to maintain alphabetical list of all transient vendors in the county or municipality and names and addresses of their agents, see § 75-85-11.

County or municipality tax collector to serve as agent for service of process for transient vendor who fails to have or maintain registered agent, see § 75-85-11.

County and municipal tax collectors to issue transient vendor license under Chapter 85, Title 75 under certain circumstances, see § 75-85-15.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

A municipal tax collector collects the taxes in the same manner and under the same penalties as state and county taxes are collected. Vanzandt v. Town of Braxton, 194 Miss. 863, 14 So. 2d 222 (1943).

The fact that this section [Code 1942, § 3742-31], when construed with § 3232, Code of 1930, requires the collector to receive payment of taxes in currency or state warrants, does not forbid his taking tentatively checks, and it cannot, therefore, be presumed that the collector paid into an insolvent depository bank only cash so as to establish a preference against the assets of the bank.

A municipal tax collector is required to collect municipal taxes at the time and in the manner and under the penalties that the state or county collector is required to act; when suit is brought for delinquent taxes ten per cent damages are collectible when prayed for in the bill. State ex rel. Roberson v. Columbus & G.R.R., 129 Miss. 882, 93 So. 362 (1922).

Where a town marshal is also tax collector and is allowed a monthly salary as marshal and a per centum to be retained out of taxes collected and for a series of months receives his salary and pays over all taxes, this will be deemed a voluntary payment, and he cannot afterwards recover commissions. Town of Wesson v. Collins, 72 Miss. 844, 18 So. 360 (1895).

A city tax collector under legal duty to pay over taxes to the treasurer is not relieved of liability on his bond for funds lost due to failure of the bank in which he has deposited them, although he had been notified by the mayor and finance committee of the city council being a majority of the council, to deposit it at the city's risk. Adams v. Lee, 72 Miss. 281, 16 So. 243 (1894).

A case where it is held the tax collector is not relieved from paying taxes collected by him to the treasurer although he has lost such money by virtue of the failure of a bank in which he deposited said collections under the direction of the mayor and finance committee of the city council, which constituted a majority of the council. Adams v. Lee, 72 Miss. 281, 16 So. 243 (1894).

ATTORNEY GENERAL OPINIONS

Section 21-33-53 authorizes a municipality to use the collection of personal ad valorem taxes as set forth in Section 27-41-101 et seq., and the chief of police or his designee may exercise the powers and discharge the duties imposed upon the sheriff by Section 27-41-107 to collect municipal taxes. Cole, Feb. 14, 2003, A.G. Op. #03-0037.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 769-773.

CJS. 84 C.J.S., Taxation §§ 1120, 1130-1136, 1139.

§ 21-33-55. Property escaping taxation; assessment.

The governing authorities of all municipalities in this state, including private charter municipalities, are hereby authorized and empowered to cause all taxable property, whether real or personal, within the corporate limits, and liable to taxation, which from any cause has escaped taxation within the past seven (7) years, to be assessed for taxes for each year in which such property has escaped taxation. In all cases of the assessment of property under this section, the governing authorities of any municipality ordering such assessment shall fix a day for the hearing of objections to such assessment, and shall cause the municipal clerk to give to the property owner ten (10) days' written notice, by mail, if the post office address of the owner be known; if the post office address of the owner be unknown, notice shall be given by posting notice for at least ten (10) days in five (5) public places in the municipality, of the time and place for the hearing of objections to such assessment.

In the event it be discovered that the property of any railroad, or other public service corporation required by law to be assessed by the state railroad assessors, has escaped assessment and taxation for any reason, the assessor, upon his own motion, or upon request of the governing authorities of the municipality, shall notify the state railroad assessors of such fact, and state the name of the owner and the kind of property escaping assessment and taxation. The state railroad assessors shall proceed to assess such property as provided by Section 27-35-325, Mississippi Code of 1972.

No leasehold interest in any property, real or personal, belonging to the state of Mississippi, counties, districts, municipalities or any political subdivisions, shall be subjected to ad valorem taxation for any past year on the basis of it having been omitted from the ad valorem tax rolls.

SOURCES: Codes, 1942, § 3742-26; Laws, 1938, Ex. Sess., chs. 19, 70; Laws, 1950, ch. 492, § 26; Laws, 1984, ch. 456, § 2, eff from and after passage (approved May 9, 1984).

Cross References — Assessment of all taxable real and personal property, see § 21-33-9.

Assessment of public utilities, see § 21-33-11.

Collection of taxes by sale of property earlier escaping taxation, see § 21-33-57.

Void sales of property sold for delinquent taxes, see § 21-33-59.

"Taxes" including delinquent special improvement assessments, see § 21-33-61.

General exemptions from ad valorem tax, see § 27-31-1.

Additional provision as beginning assessment of persons and property having escaped taxation, see § 27-35-155.

State tax commission assessing property escaping taxation, see § 27-35-325.

Void sales of lands to state for taxes, see § 29-1-31.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

Assessment of back taxes against farm land owned by college was void where assessment was made by mayor and commissioners of the municipality and not by the assessor as required by law. City of Jackson v. Belhaven College, 195 Miss. 734, 15 So. 2d 621 (1943).

Attempted assessment of back taxes against farm land owned by, and used in the operation of, college by mayor and commissioners of municipality was void for failure to adjudicate necessary jurisdictional fact that 10 days' notice in writing was given to the property owner as required by law. City of Jackson v. Belhaven College, 195 Miss. 734, 15 So. 2d 621 (1943).

ATTORNEY GENERAL OPINIONS

Miss. Code Section 21-33-55 addresses issue of statute of limitations on property escaping assessment of taxation; it is assessable for seven years past; for property which has been assessed and on which tax has been levied, there appears to be no time limit on collection. Sanders, Mar. 4, 1993, A.G. Op. #93-0100.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 675-677.

18A Am. Jur. Pl & Pr Forms (Rev), Notice, Form 1 (notice, general form).

18A Am. Jur. Pl & Pr Forms (Rev), Notice, Form 25 (affidavit of notice by posting).

CJS. 84 C.J.S., Taxation §§ 607, 672, 765-768.

Law Reviews. 1984 Mississippi Supreme Court Review: Property. 55 Miss. L. J. 135, March, 1985.

§ 21-33-57. Property escaping taxation; collection of tax; sale.

The property owner affected by any assessment made under Section 21-33-55 shall have thirty (30) days within which to pay the taxes after the approval of assessment. After the expiration of thirty (30) days, if the taxes shall not have been paid, it shall be the duty of the governing authorities of the municipality to designate a time for sale. Except as otherwise provided in Section 27-41-2, the sale shall be made according to the law governing the sale of property for taxes, and lists shall be filed as required by law as in other cases of sales for taxes.

SOURCES: Codes, 1942, § 3742-27; Laws, 1938, Ex. Sess., ch. 70; Laws, 1950, ch. 492, § 27; Laws, 1993, ch. 540, § 2, eff from and after October 1, 1993.

Editor's Note — Laws of 1993, ch. 540, § 11, effective October 1, 1993, provides as follows:

"SECTION 11. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Collection of taxes and sales for unpaid taxes, see §§ 21-33-53, 21-33-63.

Void sales of property sold for delinquent taxes, see § 21-33-59.

"Taxes" including delinquent special improvement assessments, see § 21-33-61.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 712, 713, 714, 717-786, 803-960.

17 Am. Jur. Legal Forms 2d (Rev), State and Local Taxation §§ 238:61 et seq. (sale of land for nonpayment of taxes).

22 Am. Jur. Pl & Pr Forms (Rev), Forms 171 et seq. (enforcement of tax liability).

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Form 58 (judgment or decree striking illegal assessment from assessment rolls and enjoining collecting of tax).

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Form 59 (judgment or decree enjoining collection of tax against property owners not notified of administrative agency's hearing to determine validity of increased assessment).

22 Am. Jur. Pl & Pr Forms (Rev), State

and Local Taxation, Forms 191 et seq. (enforcement of tax liens).

CJS. 84 C.J.S., Taxation §§ 607, 1109-1203.

§ 21-33-59. Void sales.

In all cases where property situated within a municipality has been sold for delinquent taxes, if it shall afterward appear to the governing authorities of such municipality that such sale was void on account of an insufficient or erroneous description, or for other cause, the governing authorities of such municipality may, by resolution entered upon their minutes, declare such sale to be void and thereby relinquish the title or claim of the municipality acquired under or by virtue of such void sale. In such event the governing authorities of such municipality shall be authorized and empowered to cause such property to be properly and legally assessed for each of the years for which such taxes have not been paid, and shall be authorized and empowered to change, revise, correct and revalue such property for each of the years for which such taxes have not been paid, and shall be authorized and empowered to enter a proper order directing that such assessments be changed, revised and corrected, and to cause such changed, revised and corrected assessments to be entered upon the assessment roll in force for the year in which such order is entered. In all such cases notice of such change and correction in the assessment, or of such new assessment, shall be given to the property owner in the manner provided by law, and in such notice a date shall be fixed for hearing objections to such assessment. Such notice may be waived, however, by the property owner. All objections to such changes or new assessments shall be heard at the time designated therefor in such notice, and the governing authorities of such municipality shall then be authorized to enter an order approving such assessments and making the same final, and such property may be sold for such taxes, if necessary, in accordance with law.

This section and Section 21-33-57 shall also apply to all cases of void sales of property for taxes, and the governing authorities, in all cases where a tax sale is void from any cause, may proceed to cause a legal sale to be made, and to cause property to be assessed in all cases after a void sale where assessment may have become necessary, and to cause sale to be made, if necessary, by complying with Sections 21-33-55 and 21-33-57.

SOURCES: Codes, 1942, § 3742-28; Laws, 1938, Ex. Sess., ch. 70; Laws, 1950, ch. 492, § 28, eff from and after July 1, 1950.

Cross References — "Taxes" including delinquent special improvement assessments, see § 21-33-61.

Void sales of lands to state for taxes, see § 29-1-31.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 932-960.

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Forms 231 et seq. (invalid sale or delivery of property).

CJS. 85 C.J.S., Taxation §§ 1325-1332.

§ 21-33-61. Redemption of land sold.

The owner, or any person for him with his consent, or any person interested in the land sold for taxes, shall have two years from the date of sale in which to redeem such real property from such sale, redemption to be made by paying the taxes, damages and costs, as provided by law for the redemption of land from tax sales, saving, however, to infants and persons of unsound mind, whose real property may be sold for taxes, the right to redeem the same within two years after attaining full age or being restored to sanity, from the municipality or any purchaser thereof, on the basis herein prescribed, and on their paying the value of any permanent improvements on the land made after the expiration of two years from the date of sale of the real property for taxes. Upon such payment to the clerk of the municipality, he shall execute to the person redeeming the real property a release of all claim or title of the municipality or purchaser to such real property, which said release shall be attested by the seal of the municipality, and shall be entitled to be recorded without acknowledgment, as deeds are recorded. Said release when so executed and attested shall operate as a quitclaim on the part of the municipality or purchaser of any right or title under said tax sale.

The term "taxes" as used in Sections 21-33-55 through 21-33-61 shall include special improvement assessments or any installment thereof that may be delinquent.

SOURCES: Codes, 1942, § 3742-29; Laws, 1938, Ex. Sess., ch. 70; Laws, 1950, ch. 492, § 29, eff from and after July 1, 1950.

Cross References — Redemption of land sold for county taxes, see §§ 27-45-1 et seq.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

A redeeming landowner is required to pay not only the taxes for which the land was sold but also any taxes due after the sale. Equity Servs. Co. v. Hamilton, 257 So. 2d 201 (Miss. 1972).

The purchaser at a municipal tax sale properly protected its interest by paying taxes as they became due, and the city tax collector was under a duty to require repayment of the money advanced by the purchaser together with statutory interest and damages from the redeeming landowner. Equity Servs. Co. v. Hamilton, 257 So. 2d 201 (Miss. 1972).

Where a notice to owners to redeem property sold for taxes directed that redemption be made at the tax collector's office, the property was redeemed by such payment to the city tax collector, even though this section [Code 1942, § 3742-29] requires that taxes due be paid to the city clerk. Equity Servs. Co. v. Hamilton, 257 So. 2d 201 (Miss. 1972).

In an action by the purchaser at a municipal tax sale to confirm tax title, where the tax sale purchaser paid taxes on the land prior to redemption, the city was not required to repay the owners taxes they paid, nor were the owners required to pay an additional sum, and the money paid by the owners for redemption belonged to the purchaser. Equity Servs. Co. v. Hamilton, 257 So. 2d 201 (Miss. 1972).

2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

Statutes allowing land to be redeemed from tax sales are to be liberally construed in favor of the person seeking to redeem, and an owner's offer to redeem from any and all tax sales within the redemption period, with sufficient money upon his person with which to effect such redemption, includes every form of taxes and takes away from the taxing authorities the power to convey title to anyone else pursuant to tax sales from which no redemption had actually been accomplished by reason of neglect or otherwise of the custodian of the tax sale records. James v. Tax Inv. Co., 206 Miss. 605, 40 So. 2d 539 (1949).

Where an uneducated and illiterate Negro woman appeared at the office of the chancery clerk to pay the back taxes on her property and she was informed only of the most recent tax sale and not of a previous sale for delinquent tax in a prior year, her efforts to pay all back taxes, having the money on her person with which to do so, was sufficient to effect redemption and took away from the taxing authorities the power to convey the title to her property under the first tax sale. James v. Tax Inv. Co., 206 Miss. 605, 40 So. 2d 539 (1949).

ATTORNEY GENERAL OPINIONS

Landowner who fails to redeem property sold at municipal tax sale within prescribed two year period does not acquire any additional redemption rights due to fact that tax sale purchaser has not yet requested tax deed to property in question; landowner's payment of county taxes on property sold at municipal tax sale would have no effect on city's ability to issue tax deed for non-payment of municipal taxes after prescribed statutory redemption period has expired. Bardwell, March 28, 1990, A.G. Op. #90-0226.

RESEARCH REFERENCES

ALR. Effect of certificate, statement (or refusal thereof), or error by tax collector or other public officer regarding unpaid taxes or assessments against specific property. 21 A.L.R.2d 1273.

Constitutionality, construction, and application of statute as to effect of taking appeal, or staying execution, on right to redeem from execution or judicial sale. 44 A.L.R.4th 1229.

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 889-893.

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Forms 251 et seq. (redemption).

17 Am. Jur. Legal Forms 2d (Rev), State and Local Taxation §§ 238:91 et seq. (redemption and tax deed).

CJS. 85 C.J.S., Taxation §§ 1354-1466.

§ 21-33-63. Sale for taxes; sale list.

Sales for the nonpayment of municipal taxes, both ad valorem and for special improvements, shall be made by the tax collector at such place, within the corporate limits, as the governing authorities may direct. The sale of real estate for ad valorem taxes and special improvement assessments and sale of personal property shall be made upon the same notice, at the same time, and in the same manner as provided by law for sales of like property for unpaid state and county taxes.

The lists of lands sold for taxes by the municipality shall be made as required to be made by the state and county collector, and shall be filed with the municipal clerk within twenty days after the tax sale, and shall there remain, subject to redemption for the same length of time and in the same manner as prescribed for the redemption of lands sold for state and county taxes, with the same saving to infants and persons of unsound mind. Said lists shall have the same force and effect, and confer the same right and entitle the purchasers to the same remedies, as lists made for delinquent taxes by the state and county tax collector. Such title shall be subservient, however, to a title acquired under a sale for state and county taxes.

One copy of the list of land so sold shall be filed within thirty days of such sale with the chancery clerk of the county in which said municipality is located, and the chancery clerk shall file and index said list among the land records of his county, as other tax sales are listed. However, the failure of the clerk so to file such list as herein prescribed shall not affect the validity of such tax sale.

SOURCES: Codes, 1892, §§ 3022, 3024; 1906, §§ 3425, 3428; Hemingway's 1917, §§ 5984, 5988; 1930, §§ 2585, 2589; 1942, §§ 3742-32, 3742-37; Laws, 1934, ch. 201; Laws, 1938, ch. 334; Laws, 1950, ch. 492, §§ 32, 37; Laws, 1966, ch. 602, § 1, eff from and after passage (approved May 20, 1966).

Cross References — Right of redemption for two years being guaranteed, see Miss. Const Art. 4, § 79.

Assessments for special improvements being enforced as other taxes, see § 21-41-25.

Distress and sale of personalty in collection of delinquent taxes, see § 27-41-15.

Sales of land for county taxes, see §§ 27-41-55 et seq.

Notice, affidavits and fees where land is sold for nonpayment of municipal taxes, see § 27-43-4.

Schedule of damages provided for county tax sales being applicable to municipal tax sales, see § 27-45-29.

Submission to Secretary of State of lists of lands sold to state for taxes, see § 29-1-21.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

Purchaser of tax title is not an innocent purchaser for value, but takes title subject to all its infirmities. James v. Shaffer, 202 Miss. 565, 32 So. 2d 749 (1947).

A city granted a charter prior to the effective date of a general statute that tax conveyances to a municipality be made by list, and whose charter provides no method by which the city should authenticate such sales, was competent to choose conveyance to the city by tax deed with the same effect as tax deeds to individuals. Hawkins v. City of W. Point, 200 Miss. 616, 27 So. 2d 549 (1946).

This section was inapplicable to a tax sale made under a special municipal charter provision which set a different time for tax sales than that provided by § 3249, Code 1930, since under § 2623 of the Code, the ordinance controlled and not the Code section. Lear v. Hendrix, 186 Miss. 289, 187 So. 746 (1939).

Tax sale for delinquent municipal taxes under which municipality acquired the land in question was not void because the city tax collector did not immediately after the sale convey it to the city and deposit the deed with the city clerk to remain for two years as provided by municipal ordinance, where by statute, the list of tax sales conveyed the title to the city. Lear v. Hendrix, 186 Miss. 289, 187 So. 746 (1939).

Under statutes making title acquired under municipal tax sale subservient to that acquired under sale for State and county taxes and giving municipality which purchased at its own sale right to redeem from State and county taxes, city could not acquire title by tax sale while property was charged with State and county taxes, and hence could not claim title as against purchaser from State because city purchased at sale for city taxes one day before State purchased at sale for State and county taxes. City of Jackson v. Howie, 179 Miss. 251, 175 So. 198 (1937).

Where land was sold to city for city taxes, including special municipal benefit assessment, and, one day later, to State for State and county taxes, and redemption period expired, city's claim was inchoate, under statutes, and became worthless, and hence city's foreclosure of assessment lien did not extinguish lien, but, under other statutes, lien was effective on resale by State. City of Jackson v. Howie, 179 Miss. 251, 175 So. 198 (1937).

Statute, authorizing sales for nonpayment of municipal taxes in manner provided by law for sales of like property for unpaid State and county taxes, does not authorize sale of land for municipal taxes which was not sold on regular day, at a time thereafter designated by order of mayor and board of aldermen. Hemphill v. Wofford, 178 Miss. 687, 173 So. 426 (1937).

Municipality's sale, to third person, of land which town had purchased for municipal taxes at sale held at time provided by statute, would be set aside on owner's payment of municipal taxes, expense incurred by municipality in making sale, and money paid by municipality in redeeming property from sale to State for unpaid county and State taxes, notwithstanding that sale to third person was made on date fixed by order of mayor and board of aldermen, since municipality was without power to fix another day for sale of land not sold at time fixed by statute. Hemphill v. Wofford, 178 Miss. 687, 173 So. 426 (1937).

City introducing list of lands sold to the city for taxes made out a prima facie case that sales to city were valid. Alvis v. Hicks, 150 Miss. 306, 116 So. 612 (1928).

Statute exempting property belonging to municipality includes land acquired by enforcement of collection of municipal taxes. Alvis v. Hicks, 150 Miss. 306, 116 So. 612 (1928).

Parties alleging that city, claiming title to lots through tax sale, violated statute regarding fixing place for tax sale had burden of proving same. Alvis v. Hicks, 150 Miss. 306, 116 So. 612 (1928).

Time of sale. The charter of a city not governed by the Code chapter on municipalities could not prior to the change made by the Act of 1900 (Laws, p. 79), be amended by the municipality under Code 1892, § 3039, in respect to the day of sale for municipal taxes in a manner "not consistent with" the provisions of this section making the day of sale for municipalities governed by said chapter the same as that for state and county taxes, under § 3813 of said code, and a municipal tax sale on a different day named in amendment is void. O'Flinn v. McInnis, 80 Miss. 125, 31 So. 584 (1902).

Filing of list with clerk. In the ejectment by the grantee in a municipal tax deed which was not filed with the clerk as required by this section, the defendant may show the facts to entitle him to protection as a bona fide purchaser without notice under Code 1892, § 2458 (Code 1906, § 2788), and cannot maintain a subsequent bill for cancellation on the theory that such facts constitute an equitable defense. Sintes v. Barber, 78 Miss. 585, 29 So. 403 (1901).

A municipal tax deed which was filed with the municipal clerk there to remain subject to redemption for two years from date of sale, is void for noncompliance with this section. Sintes v. Barber, 78 Miss. 585, 29 So. 403 (1901).

A municipal tax deed under which plaintiff claims and which was not filed with the clerk in accordance with this section and the next succeeding section, is available as defense in ejectment and is not such an equitable defense as will support a subsequent bill for cancellation. Sintes v. Barber, 78 Miss. 585, 29 So. 403 (1901).

Place of sale.A municipal tax sale is invalid when the municipal authorities have failed to designate a place for making the same as required by this section. Nixon v. City of Biloxi, 76 Miss. 810, 25 So. 664 (1899).

ATTORNEY GENERAL OPINIONS

If a city has acquired 16th Section property for the non-payment of municipal taxes, one the sale has matured, the city is the owner of the leasehold and, at that point, may pay the lease for the balance of the term of the lease, convey the leasehold to a third party, or relinquish the lease to the school board by way of settling the claim against the city for lease payments and avoiding liability therefore. Myers, January 16, 1997, A.G. Op. #97-0837.

Since property should not be sold again once it has been struck to the state at a tax sale, a subsequent municipal tax sale would be void and the purchase would be entitled to a refund of the purchase price paid at the sale, but would not be entitled to payment of interest, except that portion of the purchase price representing the interest due on the taxes. Myers, January 15, 1998, A.G. Op. #97-0836.

Failing to demand a tax deed does not relieve a tax purchaser of any of the obligations of ownership, including the responsibility to ensure the property is maintained in a proper state of habitability or cleanliness so as not to constitute a threat to the health, safety and welfare of the surrounding community. White, Apr. 8, 2005, A.G. Op. 05-0142.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 816-831.

17 Am. Jur. Legal Forms 2d, State and Local Taxation §§ 238:61 et seq. (sale of land for nonpayment of taxes).

18A Am. Jur. Pl & Pr Forms (Rev), Notice, Form 1 (notice, general form).

18A Am. Jur. Pl & Pr Forms (Rev), Notice, Forms 24, 25 (affidavit of notice by posting or publication).

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Forms 211 et seq. (sale of property for nonpayment of taxes).

CJS. 85 C.J.S., Taxation §§ 1221-1353.

§ 21-33-65. Sale of land not sold at appointed time.

If, from any cause, a sale of any land for municipal taxes, both ad valorem and for special improvements, or any installment thereof, that may be delinquent, which is liable to such sale shall not be made at the time appointed by law for such sale, it may be sold thereafter, in the same or a subsequent year, at any time designated therefor by order of the governing authorities of the municipality in which such land may be situated. Notice of a sale so ordered shall be given by advertising it in the manner prescribed by law for the sale of land for state and county taxes, and the sale shall be made at the same place and be subject to all the provisions of law applicable to such sales made at the time appointed by law. Lists of lands sold to the municipality and to individuals shall be filed in the office of the clerk of the municipality within the same relative period of time after the sale as is allowed by law for filing such lists after tax sales made at the regular time, and the clerk shall at once record them. Such lists shall be as valid and have the same effect and be subject to all the provisions of the law applicable to such lists made of lands sold at the regular sale for taxes.

SOURCES: Codes, 1942, § 3742-33; Laws, 1938, ch. 332; Laws, 1950, ch. 492, § 33, eff from and after July 1, 1950.

Cross References — Comparable provision regarding county sales, see § 27-41-65.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

In view of this and other sections, a formal deed from the tax collector to the city after sale of land for taxes was not necessary; the lists of tax sales conveyed the title to the city. Lear v. Hendrix, 186 Miss. 289, 187 So. 746 (1939).

ATTORNEY GENERAL OPINIONS

A municipality may have a tax sale to collect delinquent taxes from past years in any subsequent year after the taxes are delinquent. Davis, Aug. 12, 2005, A.G. Op. 05-0401.

RESEARCH REFERENCES

Am Jur. 18A Am. Jur. Pl & Pr Forms (Rev), Notice, Form 1 (notice, general form).

18A Am. Jur. Pl & Pr Forms (Rev), Notice, Forms 24, 25 (affidavit of notice by posting or publication).

§ 21-33-67. Recording of conveyances.

A list of the conveyances of land sold for municipal taxes, either to the municipalities or to individuals, shall be recorded in an indexed record, which shall be kept in the office of the mayor or the city clerk of the municipality. All redemptions of said lands shall be noted on said record.

SOURCES: Codes, 1906, § 3426; Hemingway's 1917, § 5986; 1930, § 2587; 1942, § 3742-34; Laws, 1950, ch. 492, § 34; Laws, 1995, ch. 447, § 11, eff from and after July 1, 1995.

Cross References — Right to file additional homestead exemption for exemption provided for in this section when applicant otherwise filed timely application, see § 27-33-31.

Reimbursement for tax losses, see §§ 27-33-77 and 27-33-79.

Conveying lands sold to individuals at county tax sale, see § 27-45-23.

Exemption from forest acreage tax, see § 49-19-115.

§ 21-33-69. Lands struck off to the municipality.

Except as otherwise provided in Section 27-41-2, where lands are offered for sale for unpaid municipal taxes or special improvement taxes or municipal separate school district taxes, and a person will not bid therefor the amount of taxes, damages, and costs due, the same shall be struck off to the municipality and otherwise, where applicable, dealt with as lands are which are sold to the state for delinquent state and county taxes. The governing authorities shall be authorized to pay the state and county taxes on lands thus acquired by the municipality, and to collect the money thus paid, with the same damages and interest allowed individuals in similar cases under the general revenue laws of the state thereon from the date of such payment, upon the redemption of the lands from the municipal sale.

Where lands have heretofore been, or may hereafter be struck off to a municipality for unpaid municipal taxes or special improvement taxes or municipal separate school districts taxes, and such lands have also been sold or struck off to an individual or to the state for unpaid state, county, or taxing district taxes, the governing authorities of such municipality are hereby authorized to redeem such lands from the sale for delinquent state, county, or taxing district taxes by paying to the chancery clerk of the county where such lands are situated the amount necessary to redeem same and to collect the money thus paid, together with interest thereon at the rate of six percent (6%) per annum from the date of such payment, upon the redemption of such lands from the municipal sale. Such lands may be redeemed from the municipal sale for unpaid municipal taxes or special improvement taxes by the owner or other person interested in such lands, including the person to whom such lands were struck off or sold at the sale for state, county, or taxing district taxes.

When lands have heretofore or may hereafter be struck off to a municipality for unpaid municipal taxes or special improvement taxes or municipal separate school district taxes, and the title to such lands has matured or may hereafter mature in the state by virtue of a sale for unpaid state, county, or taxing district taxes, the governing authorities of such municipality may purchase said lands from the state at a price to be agreed upon by the Secretary of State, Governor, or other lawful authority. Upon payment of such amounts into the State Treasury, the state's title to said lands shall be conveyed to the said municipality by a patent, or patents, executed and delivered as provided by law in cases of sales of state lands to individuals.

SOURCES: Codes, 1892, § 3023; 1906, § 3427; Hemingway's 1917, § 5987; 1930, § 2588; 1942, § 3742-35; Laws, 1936, ch. 280; Laws, 1950, ch. 492, § 35; Laws, 1993, ch. 540, § 3, eff from and after October 1, 1993.

Editor's Note — Pursuant to Section 7-11-4, effective January 1, 1980, the words "state land commissioner", "land commissioner", "state land office" and "land office" shall mean the secretary of state.

Laws of 1993, ch. 540, § 11, effective October 1, 1993, provides as follows:

"SECTION 11. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Taxing of lands acquired by a municipality, see § 21-33-71.

How county tax sales are made, see § 27-41-59.

Taxes remain a charge on redeemed land, see § 29-1-91.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

In view of this and other sections, a formal deed from the tax collector to the city after sale of land for taxes was not required; the lists of tax sales conveyed title to the city. Lear v. Hendrix, 186 Miss. 289, 187 So. 746 (1939).

Under statutes making title acquired under municipal tax sale subservient to that acquired under sale for State and county taxes and giving municipality which purchased at its own sale right to redeem from State and county taxes, city could not acquire title by tax sale while property was charged with State and county taxes, and hence could not claim title as against purchaser from State because city purchased at sale for city taxes one day before State purchased at sale for State and county taxes. City of Jackson v. Howie, 179 Miss. 251, 175 So. 198 (1937).

Where land was sold to city for city taxes, including special municipal benefit assessment, and, one day later, to State for State and county taxes, and redemption period expired, city's claim was inchoate, under statutes, and became worthless, and hence city's foreclosure of assessment lien did not extinguish lien, but, under other statutes, lien was effective on resale by State. City of Jackson v. Howie, 179 Miss. 251, 175 So. 198 (1937).

A municipality which allegedly was permitted to redeem lands sold for State and county taxes by virtue of statute was not entitled to notice of tax sale required by statutes to be sent by clerk of chancery court to owners and to holders of liens. City of Jackson v. Nunn, 178 Miss. 665, 174 So. 578 (1937).

Assessment roll in office of city tax collector, in handwriting of city clerk and collector, was sufficiently identified without certificate. Shelby v. Burns, 153 Miss. 392, 121 So. 113 (1929).

A city to whom for want of a bidder land is struck off at a sale for municipal taxes is not a "purchaser" with right to lien, where the sale is illegal. Hodge Ship Bldg. Co. v. City of Moss Point, 144 Miss. 657, 110 So. 227 (1926).

§ 21-33-71. Taxing of lands acquired by municipality.

When the state, county, or taxing district taxes are paid by a municipality, or where lands are redeemed or purchased by a municipality, as provided in Section 21-33-69, such lands shall not be exempt from state, county, or other taxing district taxes but shall be liable for such taxes the same as if owned by an individual. It shall be the duty of the tax assessor to assess lands purchased pursuant to the authority granted in Section 29-1-51, Mississippi Code of 1972, for taxes in the same manner as other lands are assessed and if the taxes are not paid when due, it shall be the duty of the tax collector to sell said land for the delinquent taxes due and unpaid at the time and in the manner provided by law for the sale of lands for delinquent taxes.

SOURCES: Codes, 1942, §§ 3742-36, 4087; Laws, 1936, chs. 174, 280; Laws, 1950, ch. 492, § 36, eff from and after July 1, 1950.

Cross References — Municipalities acquiring lands at tax sales, see §§ 21-33-69, 21-33-73.

What property is exempt from taxation generally, see § 27-31-1.

County assessors receiving list of lands purchased from state, see § 27-35-65.

Land sold by state being assessed for taxes, see § 29-1-83.

Certification of tax levy, see § 51-33-47.

§ 21-33-73. Municipality may purchase at state and county tax sales.

Any municipality in the state having a tax lien for special improvements or any other tax lien upon property located therein is hereby authorized, when the said property is offered for sale by the state and county for state and county taxes due thereon, to purchase at such tax sale the property upon which it holds said special improvement lien, and shall be authorized to pay the amount of its bid therefor.

Whenever property upon which any municipality in this state holds a lien has already been sold for state and county taxes, the municipality may redeem the tax sale the same as other lien holders in the state, and authority for municipalities to so thus redeem is hereby granted.

SOURCES: Codes, 1942, § 3742-38; Laws, 1932, ch. 231; Laws, 1950, ch. 492, § 38, eff from and after July 1, 1950.

Cross References — What property is exempt from taxation generally, see § 27-31-1.

How county tax sales are made, see § 27-41-59.

Land sold by state being assessed for taxes, see § 29-1-83.

ATTORNEY GENERAL OPINIONS

Where property is sold for delinquent county property taxes, city tax lien is extinguished once title matures in state, and city tax lien no longer encumbers property; city could have protected its interest by purchasing or redeeming property from county tax sale in accordance with statute. Mitchell, March 13, 1990, A.G. Op. #90-0115.

§ 21-33-75. Sale or lease of land by municipality.

After the time to redeem from the municipal tax sale has expired, or after the municipality has purchased land as provided by law, said municipality, acting through its governing authorities, shall take possession of said lands and shall endeavor to sell same as expeditiously as good business may require. However, it may lease said lands until a sale thereof can be made.

Said municipal governing authorities may lease or sell any of said lands to any person in any manner that may be prescribed by an order or resolution, which said order or resolution shall be entered in the minutes covering each particular tract of land so leased or sold, it being the intention of the legislature to vest in municipal authorities in each specific case of lease or sale the right to fix the price, terms, and conditions of each sale or lease.

SOURCES: Codes, 1892, § 3025; 1906, § 3429; Hemingway's 1917, § 5989; 1930, § 2590; 1942, § 3742-39; Laws, 1934, ch. 328; Laws, 1936, ch. 280; Laws, 1950, ch. 492, § 39, eff from and after July 1, 1950.

Cross References — What property is exempt from taxation generally, see § 27-31-1.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

Adoption by a succeeding administration of a manner of sale different from that of its predecessor does not, in itself validate or invalidate the acts of the former municipal administration. Evans v. City of Jackson, 201 Miss. 14, 28 So. 2d 249 (1946).

Any particular tract of land specifically described in the resolution may be included in a resolution embracing more than one parcel of land. Evans v. City of Jackson, 201 Miss. 14, 28 So. 2d 249 (1946).

The term "order or resolution" as used in this section is not the same as the term "resolution or ordinance" as used in section 3806, Code 1942 [repealed by Laws 1950, ch. 491, § 59] and so need not be published to be effective. Evans v. City of Jackson, 201 Miss. 14, 28 So. 2d 249 (1946).

Law relating to actual possession curing defects in tax sale relates only to sale followed by possession therein prescribed; privity between purchaser at tax sale and person in possession is required for application of law relating to possession curing defects in sale; possession by purchaser from municipality of lands acquired at tax sale without ordinance therefor did not operate to cure defects in sale. Byrd v. Dickson, 152 Miss. 605, 120 So. 562 (1929).

Conveyance by municipality of lands acquired at tax sale without ordinance therefor is void. Byrd v. Dickson, 152 Miss. 605, 120 So. 562 (1929).

§ 21-33-77. Borrowing on delinquent tax lands.

When any municipality shall buy in property for delinquent taxes, such municipality is hereby authorized to issue notes, bonds, or certificates of indebtedness for the amount of the tax, for a period of time not to exceed one year after the period provided for the redemption of such land and, in addition to pledging the full faith, credit, and resources of the municipality therefor, such municipality may pledge the taxes and damages from delinquent tax sales thereon. When said notes, bonds, or certificates of indebtedness are so issued, all funds collected on said delinquent taxes and damages, or the sale of the property, in the event the title ripens in the municipality, shall be set aside as a special or trust fund for the retirement of said notes, bonds, or certificates of indebtedness. The rate of interest of said notes, bonds, or certificates of indebtedness not to exceed six per centum per annum. The authority implied and granted in this section shall apply also to the boards of trustees in municipal separate school districts, by and with the consent of the governing authorities of such municipality.

SOURCES: Codes, 1942, § 3742-40; Laws, 1932, ch. 303; Laws, 1950, ch. 492, § 40, eff from and after July 1, 1950.

§ 21-33-79. Refund of erroneously paid taxes.

The tax collectors of all municipalities are hereby authorized to refund erroneously-paid privilege or ad valorem taxes paid such municipalities. An applicant for such refunds shall submit application to the tax collector of any such municipality, and if such claim be found by the tax collector to be due, and is allowed, then the tax collector of said municipality shall issue a warrant to the claimant and deduct the proper amounts from his next settlement.

SOURCES: Codes, 1930, § 2591; 1942, § 3742-41; Laws, 1926, ch. 273; Laws, 1936, ch. 278; Laws, 1950, ch. 492, § 41; Laws, 1985, ch. 425, § 1, eff from and after passage (approved March 26, 1985).

Cross References — Refund of taxes erroneously paid, see § 27-73-1.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

Corporation sought a refund for property it bid on erroneously at a tax sale, but the appellate court determined that the trial court properly instructed the jury before the jury returned a verdict in favor of the tax collector; the corporation was required to establish that the tax collector somehow mistakenly assigned the corporation as the purchaser of the property, and the jury determined that the evidence did not support such a finding. Fiddle, Inc. v. Shannon, 834 So. 2d 39 (Miss. 2003).

Tax collector argued that the corporation did not follow the proper procedure for bringing its claim before the circuit court, the corporation asked that a letter requesting refund be treated as an application for a refund of the taxes the corporation alleged to have erroneously paid, but the tax collector contended that the corporation's only avenue to circuit court was to appeal the denial of the request for a refund; nevertheless the corporation filed suit in circuit court against the tax collector; the statutory language contained in Miss. Code Ann. § 21-33-79 and Miss. Code Ann. § 21-33-83 did not exclude a taxpayer's right to file suit. Fiddle, Inc. v. Shannon, 834 So. 2d 39 (Miss. 2003).

A corporate taxpayer was not entitled to a refund of ad valorem taxes, which had been erroneously paid on its leasehold interest in real and personal property and which had been collected by the city on behalf of the school district, as there was no statutory authority permitting a taxpayer to seek a refund from a school district of taxes paid without protest. Morco Indus., Inc. v. City of Long Beach, 530 So. 2d 141 (Miss. 1988).

Where a corporate taxpayer erroneously paid a municipal ad valorem tax assessment on personal property of the taxpayer consigned to a lessee operating as an exempt free port warehouse under Code 1972 §§ 27-31-51 et seq., the taxpayer's failure to protest the assessment by appeal to the circuit court as provided by Code § 11-51-77 did not constitute a waiver and the corporation was entitled to petition the municipality for refund under Code § 21-33-79 and thereafter appeal the municipal denial of the refund to the circuit court under Code 1972 § 21-33-83. City of Jackson v. DeSoto, Inc., 350 So. 2d 684 (Miss. 1977).

2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

Payment of municipal separate school district taxes upon a privately constructed and operated sewerage system located in public streets and roads, to which the operator's claim of ownership was denied by court decree, was a payment under mistake of fact, was not a voluntary payment, and recovery thereof from the municipality was authorized under this section [Code 1942, § 3742-41]. Stegall v. City of Jackson, 191 So. 2d 134 (Miss. 1966).

Statutory provision requiring municipality to pay claim for taxes, regardless of whether taxes were paid under protest, applies only to proceedings under statute and not to direct suit against municipality. Chassaniol v. City of Greenwood, 166 Miss. 770, 144 So. 548 (1932).

Taxpayer instituting direct suit against municipality to recover privilege taxes abandoned statutory proceeding. Chassaniol v. City of Greenwood, 166 Miss. 770, 144 So. 548 (1932).

Questions involved on taxpayer's appeal to circuit court from municipal assessment of taxes did not become moot, notwithstanding, taxpayer while appeal was pending paid taxes under protest. Grenada Bank v. Town of Moorhead, 160 Miss. 163, 133 So. 666 (1931).

A railroad company paying taxes to a municipality under protest on a void assessment of its property made by the state tax commission may recover from the municipality taxes so paid, notwithstanding the railroad company did not appeal from the order of the tax commission making such assessment. City of Hattiesburg v. New Orleans & N.E.R. Co., 141 Miss. 497, 106 So. 749 (1926), motion overruled, 143 Miss. 587, 108 So. 799 (1926).

A general protest without specifying the particular grounds thereof is sufficient in paying taxes unlawfully levied or assessed. City of Hattiesburg v. New Orleans & N.E.R. Co., 141 Miss. 497, 106 So. 749 (1926), motion overruled, 143 Miss. 587, 108 So. 799 (1926).

ATTORNEY GENERAL OPINIONS

Where school taxes have been erroneously paid, while no authority can be found for a school district to pay a refund to the municipality, the district, in its discretion, may make such a payment to the municipality, rather than having the refund amount deducted from future installments payable to the district by the municipality. McAlpin, July 8, 2005, A.G. Op. 05-0310.

RESEARCH REFERENCES

Am Jur. 17 Am. Jur. Legal Forms 2d State and Local Taxation § 238:46 (application by taxpayer-affidavit for tax abatement or refund).

72 Am. Jur. 2d, State and Local Taxation §§ 965-991.

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Forms 71 et seq. (refund or recovery of tax payments).

CJS. 84 C.J.S., Taxation §§ 1049-1054, 1059.

§ 21-33-81. Surveys and appraisals authorized.

The governing authorities of any municipality in this state are hereby authorized, in their discretion, to have the lands in the municipality (whether platted in lots and blocks or otherwise described) appraised, surveyed, the area determined, and the land and any buildings, structures or improvements thereon valued for the purpose of assessment and taxation. Such survey and appraisal may be made by the assessor or by a competent person, or persons, to be selected by the governing authorities, and the cost thereof paid from the general fund. When such survey and appraisal are made, a permanent record thereof shall be prepared and preserved as a public record by the clerk. The assessor, any member of the governing authorities, or any state official performing duties with reference to the assessment of property shall have access to such records at all reasonable hours.

The governing authorities may have prepared cards, maps, plats and such other records as may be considered proper and necessary to keep a record of all land and the elements of value thereof, in the municipality, and to revise and correct the same from time to time in order that such appraisal, and the other information, may be current.

SOURCES: Codes, 1942, § 3742-30; Laws, 1938, Ex. Sess., ch. 19; Laws, 1950, ch. § 30, eff from and after July 1, 1950.

JUDICIAL DECISIONS

1. In general.

In a taxpayer's suit attacking the validity of a contract between the city and company for professional services by the company in making a detailed appraisal and valuation study of all properties in the city including its replacement, physical and other values, if the taxpayers were aggrieved by tax assessments affecting their property which was based upon valuations made by the city assessor under the contract, they should have sought relief by filing objections with the mayor and the board of aldermen and by appealing from such assessments in the manner provided by the statute. Alexander v. Mayor of City of Natchez, 219 Miss. 78, 68 So. 2d 434 (1953), motion overruled on other grounds, 220 Miss. 207, 70 So. 2d 529 (1954).

The word "work," used by city in requiring that all work for city to cost over a certain sum, must be done by contract and let to the lowest and best bidder, does not apply to professional services requiring special training and skill of the type contemplated by a contract between the city and company for professional services by the company in making a detailed appraisal and valuation study of all properties in the city, including its replacement, physical and other values. Alexander v. Mayor of City of Natchez, 219 Miss. 78, 68 So. 2d 434 (1953), motion overruled on other grounds, 220 Miss. 207, 70 So. 2d 529 (1954).

A contract between the city and company for professional services by the company in making a detailed appraisal and valuation study of all properties in the city, including its replacement, physical and other values, does not constitute at the time of its execution an indebtedness incurred within the statute which provides that no warrant shall be issued or indebtedness incurred by any county or municipality unless there is sufficient money in the particular fund from which the allowance is or must be made, to pay such a warrant or indebtedness. Alexander v. Mayor of City of Natchez, 219 Miss. 78, 68 So. 2d 434 (1953), motion overruled on other grounds, 220 Miss. 207, 70 So. 2d 529 (1954).

§ 21-33-83. Appeals.

Any person, firm, or corporation aggrieved by the action of the governing authorities of any municipality under Sections 21-33-1 through 21-33-85 shall have the right of appeal to the circuit court of the county.

SOURCES: Codes, 1942, § 3742-43; Laws, 1938, Ex. Sess., ch. 70; Laws, 1950, ch. 492, § 43, eff from and after July 1, 1950.

Cross References — Private person's and municipal attorney's rights of appeal to circuit court in matters of tax assessments, see § 11-51-77.

Taxpayers' appealing final assessments, see § 21-33-39.

JUDICIAL DECISIONS

1. In general.

Tax collector argued that the corporation did not follow the proper procedure for bringing its claim before the circuit court, the corporation asked that a letter requesting refund be treated as an application for a refund of the taxes the corporation alleged to have erroneously paid, but the tax collector contended that the corporation's only avenue to circuit court was to appeal the denial of the request for a refund; nevertheless the corporation filed suit in circuit court against the tax collector; the statutory language contained in Miss. Code Ann. § 21-33-79 and Miss. Code Ann. § 21-33-83 did not exclude a taxpayer's right to file suit. Fiddle, Inc. v. Shannon, 834 So. 2d 39 (Miss. 2003).

Where a corporate taxpayer erroneously paid a municipal ad valorem tax assessment on personal property of the taxpayer consigned to a lessee operating as an exempt free port warehouse under Code 1972 §§ 27-31-1 et seq., the taxpayer's failure to protest the assessment by appeal to the circuit court as provided by Code § 11-51-77 did not constitute a waiver and the corporation was entitled to petition the municipality for refund under Code § 21-33-79 and thereafter appeal the municipal denial of the refund to the circuit court under Code 1972 § 21-33-83. City of Jackson v. DeSoto, Inc., 350 So. 2d 684 (Miss. 1977).

§ 21-33-85. Application of Sections 21-33-1 through 21-33-85.

Sections 21-33-1 through 21-33-85 and Section 27-41-2 shall apply to all municipalities, whether operating under code charter, special charter, or any commission form of government, except as may be otherwise provided.

SOURCES: Codes, 1942, §§ 3742-25, 3742-44; Laws, 1936, ch. 280; Laws, 1950, ch. 492, §§ 25, 44; Laws, 1993, ch. 540, § 4, eff from and after October 1, 1993.

Editor's Note — Laws of 1993, ch. 540, § 11, effective October 1, 1993, provides as follows:

"SECTION 11. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

§ 21-33-87. Tax levy to pay bonds and coupons.

The municipal governing authorities shall have the power to levy and collect annually taxes on all the taxable property within the municipal limits, in addition to other taxes, in a sufficient amount, for the purpose of paying the interest coupons as they become due on all bonds of the municipality now issued or hereafter to be issued, and the bonds themselves, which tax shall be payable only in cash or in matured coupons or bonds.

SOURCES: Codes, 1892, § 2927; 1906, § 3318; Hemingway's 1917, § 5815; 1930, § 2395; 1942, § 3374-115; Laws, 1950, ch. 491, § 115, eff from and after July 1, 1950.

Cross References — Levying municipal ad valorem taxes generally, see § 21-33-45. Results of election on bond question, see § 21-33-311.

JUDICIAL DECISIONS

1. In general.

Property brought into a municipality by annexation is subject to taxation to discharge municipal indebtedness previously incurred and existing at the time of annexation. Bridges v. City of Biloxi, 253 Miss. 812, 178 So. 2d 683 (1965), motion overruled, 253 Miss. 812, 180 So. 2d 154 (1965), motion overruled, 253 Miss. 812, 180 So. 2d 641 (1965), appeal dismissed, 383 U.S. 574, 86 S. Ct. 1077, 16 L. Ed. 2d 106 (1966).

§ 21-33-89. Tax levy for street and cemetery purposes in certain municipalities.

The governing authorities of any municipality having a population of less than one thousand, according to the last federal census, shall have the power and authority, in their discretion, to assess, levy and collect an additional ad valorem tax on all of the taxable property in such municipality of not exceeding two mills on the dollar for street maintenance, upkeep and construction purposes, and/or an additional ad valorem tax on all of the taxable property in such municipality of not exceeding two mills on the dollar for cemetery improvement, upkeep and maintenance purposes, which said taxes shall be in addition to all other taxes now authorized by law. However, such taxes shall not be levied unless and until the levy thereof has been approved by a majority of the qualified voters of such municipality voting in an election to be held for such purpose, notice of which election shall be given in some newspaper having a general circulation in such municipality not less than twenty nor more than thirty days prior to such election; one publication of such notice shall be sufficient. No consideration for homestead exemption refunds shall be considered in connection with the assessment and levy provided herein.

SOURCES: Codes, 1942, § 3374-166; Laws, 1946, ch. 439; Laws, 1950, ch. 491, § 166, eff from and after July 1, 1950.

Cross References — Authority of municipalities to construct and maintain streets, sidewalks, sewers and parks, see § 21-37-3.

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

§ 21-33-91. Exemption from municipal ad valorem taxes of certain property constructed, renovated, or improved in central business district.

The governing authorities of any municipality having a population of more than one hundred thousand (100,000) according to the most recent federal census and in which the qualified electors have approved at a special election participation in redevelopment projects in its central business district pursuant to Sections 43-35-201 through 43-35-235 may, in their discretion, exempt from all municipal ad valorem taxes, for a period of not more than seven (7) years from and after January 1, 1974, any privately owned new structures and any new renovations of and improvements to existing structures lying within a slum or blighted area within the central business district, as determined by the municipality, but only if such structures shall have been constructed, renovated or improved pursuant with the requirements of the approved project of the municipality for redevelopment of slum or blighted areas within its central business district. Such exemption shall be granted upon written application only after the finding by the governing authorities of a municipality that the construction, renovation or improvement of said property is for the purpose of promoting business and commerce in the central business district.

SOURCES: Laws, 1974, ch. 425, eff from and after passage (approved March 26, 1974).

Cross References — Property exempt from taxation generally, see § 27-31-1.
Off-street parking and business district renewal, see §§ 43-35-201 et seq.

ARTICLE 3.

CITY UTILITY TAX LAW.

SEC.
21-33-201. Citation of article.
21-33-203. Levying of tax; exemptions.
21-33-205. Collection of tax and payment to municipality.
21-33-207. Procedure for imposition of tax.
21-33-209. Procedure for discontinuance of tax.
21-33-211. Administration of City Utility Tax Law.

§ 21-33-201. Citation of article.

This article may be cited as the City Utility Tax Law.

SOURCES: Codes, 1942, § 10109-01; Laws, 1960, ch. 455, § 1, eff from and after July 1, 1960.

§ 21-33-203. Levying of tax; exemptions.

In addition to the taxes now or hereafter provided by law, there is hereby levied upon, assessed to and shall be collected from all telephone or communication utilities as defined by Section 77-3-1, Mississippi Code of 1972 and regulated under said Section 77-3-1, an additional tax of two per cent of the gross amount of revenue made and collected on local business from customers within the corporate limits of any municipality of the State of Mississippi, which qualifies as provided by the City Utility Tax Law. Such public utility shall add to the sales price of its service the amount of any tax due under the provisions of the City Utility Tax Law to the extent that such tax was not included as a part of the cost of furnishing services in the fixing of the rates and charges for such service by the Mississippi Public Service Commission. The tax levied herein shall not apply to the cash receipts collected through coin boxes or other mechanical devices where it is impracticable to render periodic statements and thereby add the tax to the sales price of its service.

Any such public utility which pays any municipality of the State of Mississippi the compensation provided for in municipal franchises or levied and provided for by Section 77-3-17, Mississippi Code of 1972, shall be exempt from the tax herein imposed and from the provisions of the City Utility Tax Law. In addition, any such public utility which makes payment of the tax imposed herein shall not be required to make payments, if any, which may be required under the terms of said Section 77-3-17.

SOURCES: Codes, 1942, § 10109-02; Laws, 1960, ch. 455, § 2, eff from and after July 1, 1960.

Cross References — Collection of city utility taxes and payment to municipality, see § 21-33-205.

Taxing of public utilities, see § 27-65-19.

JUDICIAL DECISIONS

1. In general.

A tax may be imposed under these sections without infringing upon a franchise right to the use of streets and highways. Southern Bell Tel. & Tel. Co. v. City of Meridian, 241 Miss. 678, 131 So. 2d 666 (1961).

ATTORNEY GENERAL OPINIONS

Municipality may collect city utility tax from telephone company provided such company is not assessed franchise tax. Ellis, August 5, 1992, A.G. Op. #92-0556.

Unless a telephone company is required to pay compensation pursuant to § 77-3-17, such telephone company must pay a city utility tax pursuant to this section. Davis, October 2, 1998, A.G. Op. #98-0532.

RESEARCH REFERENCES

ALR. Constitutionality, construction, and application of state and local public-utility-gross-receipts-tax statutes—modern cases. 58 A.L.R.5th 187.

§ 21-33-205. Collection of tax and payment to municipality.

The city utility taxes provided for in Section 21-33-203 shall be collected by the chairman of the state tax commission and shall be accounted for separately from the amount of all other taxes collected for the state and city in said municipality. Said taxes shall be paid to the municipality in which collected, less five per cent thereof which shall be retained by the chairman and paid into a special fund to be expended by the chairman to defray the cost of carrying out the provisions of the City Utility Tax Law. Payments to the municipalities shall be made by the chairman on or before the fifteenth day of the month following the month in which the tax was collected. When so paid, the money may be expended by the municipalities for any purpose now authorized by law.

SOURCES: Codes, 1942, § 10109-03; Laws, 1960, ch. 455, § 3, eff from and after July 1, 1960.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Section 27-3-4 provides that the terms "'Chairman of the Mississippi State Tax Commission,' 'Chairman of the State Tax Commission,' 'Chairman of the Tax Commission' and 'chairman' appearing in the laws of this state in connection with the performance of the duties and functions by the Chairman of the Mississippi State Tax Commission, the Chairman of the State Tax Commission or the Chairman of the Tax Commission shall mean the Commissioner of Revenue of the Department of Revenue."

§ 21-33-207. Procedure for imposition of tax.

(a) The mayor and board of aldermen or other governing authority of any municipality desiring to avail itself of the provisions of the City Utility Tax Law shall adopt an ordinance declaring its intention to have the utility tax imposed at the specified rate for the benefit of such municipality effective on and after a date fixed in the ordinance which must be at least thirty (30) days later and on the first day of a month. A certified copy of this ordinance shall be immediately forwarded to the Chairman of the State Tax Commission. The municipal authorities shall have a copy of the ordinance published once a week for three (3) consecutive weeks in at least one (1) newspaper published in the municipality and having a general circulation therein. The first publication shall be not less than twenty-eight (28) days prior to the levying date fixed in such ordinance, and the last publication shall be made not less than seven (7) days prior to such date. If no newspaper is published in the municipality, then notice shall be given by publishing the ordinance for the required time in some newspaper published in the same or an adjoining county having a general circulation in the municipality. A copy of the ordinance shall also be posted at three (3) public places in the municipality for a period of at least twenty-one (21) days during the time of its publication in a newspaper. The publication of the ordinance may be made as provided in Section 21-17-19. Proof of publication must also be furnished to the Chairman of the State Tax Commission.

(b) If more than twenty percent (20%) of the qualified electors of the municipality having no city utility tax shall file with the clerk of the municipality within twenty-one (21) days after adoption of the ordinance of intent to qualify for the collection of the tax, a petition requesting an election on the question of the levy of such tax, then and in that event such tax levy shall not be made unless authorized by a majority of the votes cast at an election to be called and held for that purpose. Notice of such election shall be given, the election shall be held and the result thereof determined in the manner provided in Title 21, Chapter 11, of the Mississippi Code of 1972. In the event of an election resulting in favor of the levy or where no election is required, the governing authorities shall adopt another ordinance qualifying for the collection of the tax provided in the City Utility Tax Law, and shall set the first of a month following the date of such adoption as the effective date of the tax levy. A certified copy of this ordinance together with the result of the election, if any, shall be immediately furnished the Chairman of the State Tax Commission. Upon receipt of the certified ordinance and other official notice from the municipality, the chairman shall notify the utilities in such municipality which are affected by the City Utility Tax Law, and take the necessary action to collect the tax. The first payment of the tax after its adoption shall be on all receipts of the utility derived from all billings made fifteen (15) days after the effective date of said adoption.

SOURCES: Codes, 1942, § 10109-04; Laws, 1960, ch. 455, § 4; Laws, 1988, ch. 457, § 6, eff from and after December 8, 1988 (the date the United States Attorney General interposed no objection to the amendment).

Editor's Note — Title 21, Chapter 11, referred to in (b), was repealed by Laws, 1986, ch. 495, § 329, eff from and after January 1, 1987. For current provisions pertaining to municipal elections, see §§ 23-15-1 et seq.

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Section 27-3-4 provides that the terms "'Chairman of the Mississippi State Tax Commission,' 'Chairman of the State Tax Commission,' 'Chairman of the Tax Commission' and 'chairman' appearing in the laws of this state in connection with the performance of the duties and functions by the Chairman of the Mississippi State Tax Commission, the Chairman of the State Tax Commission or the Chairman of the Tax Commission shall mean the Commissioner of Revenue of the Department of Revenue."

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

Am Jur. 18A Am. Jur. Pl & Pr Forms (Rev), Notice, Form 1 (notice, general form).

18A Am. Jur. Pl & Pr Forms (Rev), Notice, Forms 24, 25 (affidavit of notice by posting or publication).

§ 21-33-209. Procedure for discontinuance of tax.

Any qualified municipality wishing to discontinue the collection of the city utility tax may do so by an action of the mayor and board of aldermen or other governing authority adopting an ordinance to that effect. Such ordinance shall be effective after the last day of a month and the tax levy shall not apply to sales made on and after said date. A copy of the ordinance shall be furnished to the chairman of the state tax commission at least seven days prior to its effective date.

SOURCES: Codes, 1942, § 10109-05; Laws, 1960, ch. 455, § 5, eff from and after July 1, 1960.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Section 27-3-4 provides that the terms "'Chairman of the Mississippi State Tax Commission,' 'Chairman of the State Tax Commission,' 'Chairman of the Tax Commission' and 'chairman' appearing in the laws of this state in connection with the performance of the duties and functions by the Chairman of the Mississippi State Tax Commission, the Chairman of the State Tax Commission or the Chairman of the Tax Commission shall mean the Commissioner of Revenue of the Department of Revenue."

§ 21-33-211. Administration of City Utility Tax Law.

All administrative provisions of Chapter 65 of Title 27 of the Mississippi Code of 1972, including those which fix damages, penalties and interest for nonpayment of sales tax and for noncompliance with the provisions of said chapter and all other requirements and duties imposed upon the taxpayer, shall apply to all persons liable for city utility taxes under the provisions of the City Utility Tax Law. The chairman shall exercise all power and authority and perform all duties with respect to taxpayers under the City Utility Tax Law as are provided in said chapter, except where there is conflict, then the provisions of the City Utility Tax Law shall control. Any damages, penalties, or interest collected for the nonpayment of taxes, or for noncompliance with the provisions of the City Utility Tax Law, shall be paid to the municipality in which said damages were collected on the same basis and in the same manner as the tax. Any overpayment of tax for any reason that has been disbursed to any municipality or any payment of the tax to any municipality in error may be adjusted by the chairman on any subsequent payment to the municipality involved pursuant to the provisions of the said chapter. The chairman may from time to time make such rules and regulations not inconsistent with the City Utility Tax Law as may be deemed necessary to carry out its provisions and such rules and regulations shall have the full force and effect of law.

SOURCES: Codes, 1942, § 10109-06; Laws, 1960, ch. 455, § 6, eff from and after July 1, 1960.

Cross References — Penalties for failure to comply with law prescribing general sales tax, see § 27-65-85.

ARTICLE 5.

BONDS.

SEC.

21-33-301. Uniform system for issuance of municipal bonds; purposes for which bonds may be issued.
21-33-303. Limitation of indebtedness.
21-33-305. Revenues of public utilities may be pledged for payment of bonds.
21-33-307. Initiating procedures for issuance of bonds.
21-33-309. Holding of bond election.
21-33-311. Results of election.
21-33-313. Details of municipal bonds; supplemental powers conferred in issuance of bonds.
21-33-315. Maturities and interest.
21-33-317. Proceeds of bonds not to be diverted.
21-33-319. Transfer of residue of bond proceeds.
21-33-321. Bond and interest fund may be used to buy outstanding bonds.
21-33-323. Investment of surplus funds.
21-33-325. Borrowing in anticipation of taxes.
21-33-325.1. Borrowing in anticipation of taxes by certain municipalities.
21-33-326. Borrowing in anticipation of confirmed federal grants or loans.
21-33-327. Incurring of indebtedness.
21-33-329. Application of article.

§ 21-33-301. Uniform system for issuance of municipal bonds; purposes for which bonds may be issued.

The governing authorities of any municipality are authorized to issue negotiable bonds of the municipality to raise money for the following purposes:

(a) Erecting municipal buildings, armories, auditoriums, community centers, gymnasiums and athletic stadiums, preparing and equipping athletic fields, and purchasing buildings or land therefor, and for repairing, improving, adorning and equipping the same, and for erecting, equipping and furnishing of buildings to be used as a municipal or civic arts center;

(b) Erecting or purchasing waterworks, gas, electric and other public utility plants or distribution systems or franchises, and repairing, improving and extending the same;

(c) Purchasing or constructing, repairing, improving and equipping buildings for public libraries and for purchasing land, equipment and books therefor, whether the title to same be vested in the municipality issuing such bonds or in some subdivision of the state government other than the municipality, or jointly in such municipality and other such subdivision;

(d) Establishing sanitary, storm, drainage or sewerage systems, and repairing, improving and extending the same;

(e) Protecting a municipality, its streets and sidewalks from overflow, caving banks and other like dangers;

(f) Constructing, improving or paving streets, sidewalks, driveways, parkways, walkways or public parking facilities, and purchasing land therefor;

(g) Purchasing land for parks, cemeteries and public playgrounds, and improving, equipping and adorning the same, including the constructing, repairing and equipping of swimming pools and other recreational facilities;

(h) Constructing bridges and culverts;

(i) Constructing, repairing and improving wharves, docks, harbors and appurtenant facilities, and purchasing land therefor;

(j) Constructing, repairing and improving public slaughterhouses, markets, pest houses, workhouses, hospitals, houses of correction, reformatories and jails in the corporate limits, or within three (3) miles of the corporate limits, and purchasing land therefor;

(k) Altering or changing the channels of streams and water courses to control, deflect or guide the current thereof;

(*l*) Purchasing fire-fighting equipment and apparatus, and providing housing for same, and purchasing land therefor;

(m) Purchasing or renting voting machines and any other election equipment needed in elections held in the municipality;

(n) Assisting the Board of Trustees of State Institutions of Higher Learning, the Bureau of Building, Grounds and Real Property Management of the Governor's Office of General Services, or any other state agency in acquiring a site for, constructing suitable buildings and runways and equipping an airport for the university or other state-supported four-year college, now or hereafter in existence, in or near which the municipality is located, within not more than ten (10) miles of the municipality;

(o) Acquiring and improving existing mass transit system; however, no municipal governing authorities shall authorize any bonds to be issued for the acquiring and improving of an existing mass transit system unless an election be conducted in said municipality in the same manner provided for general and special elections, and a majority of the qualified electors of the municipality participating in said election approve the bond issuance for the acquiring and improving of an existing mass transit system;

(p) Purchasing machinery and equipment which have an expected useful life in excess of ten (10) years. The life of such bonds shall not exceed the expected useful life of such machinery and equipment. Machinery and equipment shall not include any motor vehicle weighing less than twelve thousand (12,000) pounds;

(q) A project for which a certificate of public convenience and necessity has been obtained by the municipality pursuant to the Regional Economic Development Act.

SOURCES: Codes, 1892, § 3014; 1906, § 3415; Hemingway's 1917, § 5968; 1930, § 2483; 1942, § 3598-01; Laws, 1914, ch. 147; Laws, 1928, ch. 207; Laws, 1930, ch. 79; Laws, 1950, ch. 493, § 1; Laws, 1954, ch. 360, § 28; Laws, 1957, Ex. Sess., ch. 13, § 6; Laws, 1966, ch. 598, § 1; Laws, 1971, ch. 400, § 1; Laws, 1973, ch. 424, § 1; Laws, 1979, ch. 464; Laws, 1987, ch. 360; Laws, 2000, 2nd Ex Sess, ch. 1, § 47, eff from and after passage (approved Aug. 30, 2000.)

Editor's Note — Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Laws of 2000, 2nd Ex Sess, ch. 1, § 1 provides:

"SECTION 1. This act may be cited as the 'Advantage Mississippi Initiative.'"

Cross References — Issuance of bonds to establish convention center, see §§ 17-3-15 et seq.

Authority for bond issue for joint construction of jails by counties and municipalities, see § 17-5-1.

Applicability of uniform system for issuance of municipal bonds to financing of interlocal improvements or projects, see § 17-13-13.

Authorization for issuance of bonds for solid or hazardous waste disposal projects, see § 17-17-105.

Requirement that county or municipal general obligation bonds for capital expenditures, such as for waste management facilities, comply with provisions of §§ 21-33-301 through 21-33-329, see § 17-17-329.

Issuance by municipalities of bonds for payment of costs for closure, post-closure maintenance or corrective action for solid waste management facilities, see § 17-17-335.

Uniform system for issuance of negotiable notes or certificates of indebtedness, see §§ 17-21-51 et seq.

County supervisors purchasing real estate for courthouses and jails, poor homes and farms, see § 19-7-1.

Purpose and uniform system for issuance of county bonds, see §§ 19-9-1 et seq.

Municipality's general powers, see § 21-17-1.

General powers of municipality to create, maintain and operate public utilities' systems and transportation system, see § 21-27-23.

Municipalities borrowing money for extension or repair of public utilities' systems, see § 21-27-25.

Procedures for initiating issuance of bonds, see § 21-33-307.

Maturities and interest payable on all municipal bonds, see § 21-33-315.

No diversion of proceeds of bond issues from purpose for which bonds authorized, see § 21-33-317.

Municipality borrowing for current expenses in anticipation of taxes, without notice or election, see § 21-33-325.

Municipal revolving fund being available for distribution to municipalities, see § 21-33-401.

Borrowing money to make special improvements, see § 21-41-41.

Limitations on bond issue except as to refunding, see § 31-15-5.

Validation of bonds signed by officials no longer in office, see § 31-19-7.

Tax officials paying matured bonds promptly, see §§ 31-19-9 et seq.

Outstanding bonds being registered by holders, see § 31-19-17.

Advertising sale of bonds, see § 31-19-25.

Additional powers conferred in connection with issuance of bonds, see § 31-21-5.

Application of the provisions of this section to the Mississippi Development Bank Act, see § 31-25-27.

General provisions regarding school bonds and their purposes, see §§ 37-59-1 et seq.

Issuance of bonds for off-street parking and business district renewal, see §§ 43-35-203 et seq.

County and municipal bonds for pollution control, see §§ 49-17-101 et seq.

Regional Economic Development Act, see §§ 57-64-1 et seq.

Which municipalities authorized to issue general obligation bonds for airport facilities, see §§ 61-3-3, 61-3-65.

Municipal support of airport facilities for state university and colleges, see § 61-5-71.

Municipalities procuring airports, see § 61-5-75.

Issuing bonds to aid in construction of state highways, see § 65-1-81.

What constitutes forgery in connection with public securities, see § 97-21-9.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.
7. Purposes for which issued.
8. Irregularities in issuance.
9. Application of statutes of limitation.
10. Effect of debt limit on issuance.
11. Date of maturity.
12. Injunctive relief.
13. Judicial review.

I. Under Current Law.

1. In general.

City of Hattiesburg could lawfully proceed with issuance of general obligation industrial park bonds under Chapter 886, Local and Private Laws of Mississippi, Regular Session 1984, which dispenses with the necessity for a bond issue election, except upon petition of 10 percent of the city's registered voters. Brandon v. City of Hattiesburg, 493 So. 2d 324 (Miss. 1986).

2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

The issuance of such bonds was not objectionable on the ground that the board sought to issue county-wide bonds for obligations which appeared on the face of the order to be, in large part, the debts of several, separate road districts, where there was nothing in the record to show that during the time such obligations were incurred the public roads in the county were being maintained under any separate district system. In re Lincoln County Funding Bonds, 187 Miss. 392, 193 So. 26 (1940).

The issuance of such bonds not objectionable on the ground that the debts were invalid based on a presumption that in view of such order the county budget was exceeded, since the condition might have been brought about by this appointment in the collection of expected amounts of taxes and there was no showing in the record as to how the condition was brought about. In re Lincoln County Funding Bonds, 187 Miss. 392, 193 So. 26 (1940).

The issuance of county funding bonds for the payment of outstanding and unpaid obligations of the county could not be attacked on the ground that some of the obligations were not incurred in the manner provided by law, where the order of the board of supervisors for the issuance of such bonds in reciting its investigation and findings as to the validity of the items as obligations of the county was sufficient to give such obligations the dignity required by this section, without reciting the antecedent and evidentiary facts. In re Lincoln County Funding Bonds, 187 Miss. 392, 193 So. 26 (1940).

Where a majority of the qualified electors residing in a consolidated school district, by petition, request issuance of bonds for certain school purposes, it is not necessary to call for an election on the question, in the absence of a request in the petition itself calling for such an election, and the requirement that the bond shall be issued "in the manner provided for by law," in such case, has no reference to the provisions of this section but refers to the details of the issuance. In re Validation Bonds of Orange Grove Consol. Sch. Dist., 187 Miss. 373, 193 So. 6 (1940).

A course of conduct pursued by a County Board of Supervisors in incurring debts for county road work when there were insufficient funds in the road fund at the time for the payment of such debts, and in ordering warrants for their payment without funds on hand to be paid out of such moneys as should thereafter come into the road funds, was within the express prohibition of this section, and such debts so incurred could not be the foundation for any action in mandamus for their payment. Edmondson v. Board of Supvrs., 185 Miss. 645, 187 So. 538 (1939).

Holder of county warrant on game and fish fund, held entitled to compel board of supervisors by mandamus to issue and sell bonds of county in sufficient amount to pay warrant, after game and fish laws repealed. Tucker Printing Co. v. Board of Supvrs., 171 Miss. 608, 158 So. 336 (1934).

Bank, which advanced funds with which school district purchased land for teachers' home, took trust deed to secure loan, and collected interest thereon without petition or election by qualified voters as required by statute, held accountable in representative suit by taxpayers for interest collected and without any rights against school district since loan was void. Toler v. Love, 170 Miss. 252, 154 So. 711, 95 A.L.R. 1416 (1934).

But company selling goods to county held not entitled to mandatory order requiring board of supervisors to issue bonds to pay claim, where seller did not show it would be entitled as matter of right to have clerk issue warrant if money were available to pay it. AMOCO v. Bishop, 163 Miss. 249, 141 So. 271 (1932), error overruled, 163 Miss. 257, 141 So. 765 (1932).

Validity of items of outstanding warrants and obligations cannot be adjudicated by chancellor in county bond validation proceeding, such objections constituting collateral attacks on county board's judgment. Harvey v. Covington County, 161 Miss. 765, 138 So. 403 (1931).

Failure of State's bond attorney to attend hearing in county bond validation proceeding did not invalidate proceeding. Harvey v. Covington County, 161 Miss. 765, 138 So. 403 (1931).

Lack or insufficiency of funds necessary to pay county indebtedness incurred under positive statute, and road and bridge obligations arising out of emergency, held not to invalidate indebtedness and obligations. Choctaw County v. Tennison, 161 Miss. 66, 134 So. 900 (1931).

The board of mayor and aldermen may order the issuance of bonds at an adjourned regular meeting. Green v. Hutson, 139 Miss. 471, 104 So. 171 (1925).

A county having outstanding obligations may issue bonds to obtain money to pay same. Town of Crenshaw v. Jackson, 122 Miss. 711, 84 So. 912 (1920).

The legislature may authorize the city to issue bonds for the construction and equipment of a hospital on a majority vote and it shall pass general laws under which cities may be chartered without violating the Constitution of the state. Feemster v. City of Tupelo, 121 Miss. 733, 83 So. 804 (1920).

The Supreme Court may take judicial notice of the conflict in opinion among people of the county on the question of issuing bonds for public improvement. Madison County v. Howard, 119 Miss. 133, 80 So. 524 (1919).

This section does not require the board of supervisors to issue serial bonds to take up outstanding loan warrants for the payment of which current taxes are pledged. Board of Supvrs. v. Bourgeois, 118 Miss. 163, 79 So. 91 (1918).

7. Purposes for which issued.

Sections 3598 and 6416, Code 1942, authorizing issuance of municipal bonds for purpose of erecting school buildings and purchasing lands authorize use of funds to construct stadium and athletic field, provided they are appropriate, proper, and necessary to comply with courses in physical education prescribed by board of education, department of education and trustees of schools under

§§ 6423, 6665, 6666, and 6670, Code of 1942. Nichols v. Calhoun, 204 Miss. 291, 37 So. 2d 313 (1948).

Although a municipality has not legally declared itself to be a separate school district, it may under its charter powers purchase lands for school purposes and construct school buildings and issue bonds for such purposes. Bingham v. Woodell, 109 Miss. 769, 69 So. 678 (1915).

A city may prepare for the construction of a waterworks plant four years before the expiration of a franchise of a waterworks company in the city without an abuse of its discretion. Griffith v. City of Vicksburg, 102 Miss. 1, 58 So. 781 (1912).

A municipality is limited to the purposes for which bonds may be issued and to the amount authorized. City of Hazlehurst v. Mayes, 96 Miss. 656, 51 So. 890 (1910).

Under an earlier statute, bonds could not be issued for the purpose of buying real estate for public parks. City of Hazlehurst v. Mayes, 96 Miss. 656, 51 So. 890 (1910).

Municipal bonds may be issued for the purpose of paving streets in the business portion of the municipality and a tax can be rightfully laid upon all the taxable property in the municipality to pay for them. Maybin v. City of Biloxi, 77 Miss. 673, 28 So. 566 (1900).

Under an earlier form of this provision it was held that the restrictive provisions of the last paragraph of Code 1892, § 4014 (Code 1906, § 4534), limit both the preceding paragraphs, and the provision in the second paragraph as to the levying and collecting of taxes to erect and repair schoolhouses, is not additional to the powers to issue bonds for that purpose contained in this section. Village of Boguechitto v. Lewis, 75 Miss. 741, 23 So. 549 (1898).

8. Irregularities in issuance.

Bona fide holders of municipal bonds regular on their face are protected against informalities and irregularities in proceedings authorized in the issuance of the bonds and from mistakes of the municipal authorities. Greene v. Village of Rienzi, 87 Miss. 463, 40 So. 17, 112 Am. St. R. 449 (1906).

A municipality may estop itself from setting up irregularities in their issuance as a defense to its bonds. Town Council v. Union Nat'l Bank, 75 Miss. 1, 22 So. 291 (1897).

9. Application of statutes of limitation.

The failure of this statute to make reference to any statute of limitations did not have the effect of waiving, as to all obligations of a county incurred after its enactment, a statute providing that statutes of limitations should begin to run in favor of the state, counties and municipal corporations at the time when the plaintiff had the first right to demand payment. Fuqua v. Board of Supvrs., 192 Miss. 6, 4 So. 2d 350 (1941).

The six-year statute of limitations was applicable to the right of a teacher in an agricultural high school to demand payment of salary from the proceeds of bonds to be issued by the county and to compel issuance of such bonds by mandamus upon failure of the board of supervisors (which was not shown to have ever been advised of the existence of the obligation until suit was filed), otherwise to do so. Fuqua v. Board of Supvrs., 192 Miss. 6, 4 So. 2d 350 (1941).

10. Effect of debt limit on issuance.

In the issuance of funding bonds for the payment of claims against a supervisor's district, county boards of supervisors must find as a jurisdictional fact that the proposed funding bonds, when added to a county's outstanding bonded indebtedness, shall not exceed 10 per cent of the assessed valuation of taxable property within the county, and set forth such fact in its order before the bonds can validly be issued or validated. Brown v. Board of Supvrs., 185 Miss. 216, 187 So. 738 (1939).

The failure of the county board of supervisors to affirmatively adjudicate in an order providing for the issuance of funding bonds to pay certain claims or debts incurred by a supervisor's district that the debt incurred, when added to all of the then outstanding indebtedness of the supervisor's district, both bonded and floating, did not result in the imposition upon any of the property in such district of an indebtedness for road purposes of more than 10 per cent of the assessed value of such property, as ascertained by the last completed assessment for taxation, constituted fatal error and rendered such order of the board null and void, on its face, and subject to attack in a proceeding for validation of such bonds. Brown v. Board of Supvrs., 185 Miss. 216, 187 So. 738 (1939).

Where the chancellor was in error in rendering a decree of validation as to issuance of certain funding bonds in payment of claims against a supervisor's district because the order of the board for such issuance was void because of the violation of § 4321, a decree would be reversed without prejudice to the right of the county to provide for the payment of such indebtedness by the legal issuance of other bonds under this section, or in such other manner as might be authorized by law. Brown v. Board of Supvrs., 185 Miss. 216, 187 So. 738 (1939).

Proposed county bonds to take up outstanding county obligations were "funding" and not "refunding" bonds, and therefore limited to ten per cent of assessed value of taxable property of county. Lee v. Hancock County, 181 Miss. 847, 178 So. 790 (1938), error overruled, 181 Miss. 859, 179 So. 559 (1938).

"Refunding bond" is a bond issued to pay off an older issue; to "refund a debt" meaning to fund it again or anew; the word "fund" in this connection meaning to convert into a more or less permanent debt bearing regular interest. Lee v. Hancock County, 181 Miss. 847, 178 So. 790 (1938), error overruled, 181 Miss. 859, 179 So. 559 (1938).

11. Date of maturity.

Funding bonds for outstanding obligations issued under this section are not subject to the limitation that their maturity shall not run beyond ten years, applicable to funding bonds to discharge an indebtedness incurred on anticipation tax obligations. In re Lincoln County Funding Bonds, 187 Miss. 392, 193 So. 26 (1940).

A case with reference to bond issue by Leflore County holding that this statute does not require bonds to begin to mature at the expiration of the 1st year after their issuance. Robertson v. Board of Supvrs., 119 Miss. 621, 81 So. 408 (1919).

12. Injunctive relief.

A resident taxpayer of the municipality may enjoin the wrongful issuance of municipal bonds. Town of Clarksdale v. Broaddus, 77 Miss. 667, 28 So. 954 (1900).

13. Judicial review.

An appeal by taxpayers to the circuit court from orders and allowances made by the board of supervisors with respect to the issuance of county funding bonds was improper, where the bill of exceptions failed to set forth the facts in full and was not signed by the president of the board as the law required, and items which should have been entered and a statement as to their correctness was left to the clerk. In re $50,000 Serial Funding Bonds, 187 Miss. 512, 193 So. 449 (1940).

An appeal to the circuit court by taxpayers from orders and allowances made by the county board of supervisors with respect to the issuance of county funding bonds was ineffective, where the chancery court had acquired jurisdiction of the whole matter in a validation proceeding. In re $50,000 Serial Funding Bonds, 187 Miss. 512, 193 So. 449 (1940).

With respect to an appeal to the circuit court by taxpayers from orders and allowances of a board of supervisors with respect to issuance of county funding bonds, a party having a claim to be allowed or having been allowed by the board is an interested party on an appeal to the circuit court, and separate appeals from all orders must be prosecuted where an appeal has been taken, and the bill of exceptions must either be filed during the court term or meeting of the board of supervisors or within such time as the law or the board might allow for filing such bill and appeal. In re $50,000 Serial Funding Bonds, 187 Miss. 512, 193 So. 449 (1940).

The right of a taxpayer to prosecute appeals from orders and allowances by a board of supervisors in connection with the issuance of funding bonds to matters in which he has no pecuniary or property interest is limited. In re $50,000 Serial Funding Bonds, 187 Miss. 512, 193 So. 449 (1940).

The chancery court, having acquired jurisdiction of a proceeding on validation of county funding bonds, erred in dismissing the proceedings, in view of the fact that it had the power to pass upon the legality of the bond issue in all respects, including the various claims constituting the alleged indebtednesses, and an appeal by the taxpayers to the circuit court during the pendency of such proceeding in the chancery court was improper. In re $50,000 Serial Funding Bonds, 187 Miss. 512, 193 So. 449 (1940).

Where a petition for a writ of certiorari, filed in the circuit court, after a decree in chancery court validating the issuance of county funding bonds, was confined in the same record, made by the board of supervisors, which the chancery court had before it in the validation proceedings, disposition of an appeal from the chancery court would not be stayed. In re Lincoln County Funding Bonds, 187 Miss. 392, 193 So. 26 (1940).

In the absence of an appeal from an order of the board of county supervisors adjudicating the validity of certain claims, for the payment of which an order for the issuance of funding bonds was made, no objections could be taken on appeal from a decree validating such bonds based on the ground that the indebtednesses for the payment of which the bonds were to be issued did not constitute valid, legal and undisputed outstanding obligations of a supervisor's district for the reason that such indebtednesses were incurred in violation of § 4321 prohibiting the incurring of an indebtedness unless there is sufficient money at the time in the particular fund from which allowance for the payment thereof is to be made, since the chancellor had no jurisdiction to pass on the validity of such claim and such objection constituted a collateral attack on the orders and judgments of the board of supervisors. Brown v. Board of Supvrs., 185 Miss. 216, 187 So. 738 (1939).

RESEARCH REFERENCES

ALR. Power of governmental unit to issue bonds implying power to refund them. 1 A.L.R.2d 134.

Validity of municipal bond issue as against owners of property annexation of which to municipality became effective after date of election at which issue was approved by voters. 10 A.L.R.2d 559.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 553 et seq.

64 Am. Jur. 2d, Public Securities and Obligations §§ 86 et seq.

20A Am. Jur. Pl & Pr Forms (Rev), Public Securities and Obligations, Form 56 (complaint, petition, or declaration for writ of mandamus to compel levy of taxes to pay outstanding bonded indebtedness).

20A Am. Jur. Pl & Pr Forms (Rev), Public Securities and Obligations, Form 57 (complaint in federal court alleging diversity of citizenship and seeking to recover principal of municipal bond).

20A Am. Jur. Pl & Pr Forms (Rev), Public Securities and Obligations, Form 58 (answer alleging illegality of bond).

CJS. 64 C.J.S., Municipal Corporations §§ 2134 et seq; 2118-2120 et seq.

§ 21-33-303. Limitation of indebtedness.

No municipality shall hereafter issue bonds secured by a pledge of its full faith and credit for the purposes authorized by law in an amount which, when added to the then outstanding bonded indebtedness of such municipality, shall exceed either (a) fifteen percent (15%) of the assessed value of the taxable property within such municipality, according to the last completed assessment for taxation, or (b) ten percent (10%) of the assessment upon which taxes were levied for its fiscal year ending September 30, 1984, whichever is greater. In computing such indebtedness, there may be deducted all bonds or other evidences of indebtedness, heretofore or hereafter issued, for school, water, sewerage systems, gas, and light and power purposes and for the construction of special improvements primarily chargeable to the property benefited, or for the purpose of paying the municipality's proportion of any betterment program, a portion of which is primarily chargeable to the property benefited. However, in no case shall any municipality contract any indebtedness which, when added to all of the outstanding general obligation indebtedness, both bonded and floating, shall exceed either (a) twenty percent (20%) of the assessed value of all taxable property within such municipality according to the last completed assessment for taxation or (b) fifteen percent (15%) of the assessment upon which taxes were levied for its fiscal year ending September 30, 1984, whichever is greater. Nothing herein contained shall be construed to apply to contract obligations in any form heretofore or hereafter incurred by any municipality which are subject to annual appropriations therefor, or to bonds heretofore issued by any municipality for school purposes, or to contract obligations in any form heretofore or hereafter incurred by any municipality which are payable exclusively from the revenues of any municipally-owned utility, or to bonds issued by any municipality under the provisions of Sections 57-1-1 through 57-1-51, or to any special assessment improvement bonds issued by any municipality under the provisions of Sections 21-41-1 through 21-41-53, or to any indebtedness incurred under Section 55-23-8.

All bonds issued prior to July 1, 1990, pursuant to this chapter by any municipality for the purpose of the constructing, replacing, renovating or improving wastewater collection and treatment facilities in order to comply with an administrative order of the Mississippi Department of Natural Resources issued pursuant to the Federal Water Pollution Control Act and amendments thereto, are hereby exempt from the limitation imposed by this section if the governing body of the municipality adopts an order, resolution or ordinance to the effect that the rates paid by the users of such facilities shall be increased to the extent necessary to provide sufficient funds for the payment of the principal of and interest on such bonds as each respectively becomes due and payable as well as the necessary expenses in connection with the operation and maintenance of such facilities.

SOURCES: Codes, Hemingway's 1917, §§ 5969, 5971; Hemingway's 1921 Supp. § 6069p; 1930, §§ 2484, 2485; 1942 § 3598-02; Laws, 1914, ch. 147; Laws, 1920, ch. 169; Laws, 1932, ch. 235; Laws, 1950, ch. 493, § 2; Laws, 1955, Ex. Sess., ch. 96; Laws, 1962, ch. 555; Laws, 1982, ch. 347, § 2; Laws, 1985, ch. 476, § 2; Laws, 1987, ch. 424, § 2; Laws, 1989, ch. 516, § 1; Laws, 1989, ch. 499, § 1; Laws, 1992, ch. 499 § 1; Laws, 1995, ch. 526, § 2; Laws, 1996, ch. 401, § 1; Laws, 2001, ch. 602, § 12, eff from and after passage (approved Apr. 16, 2001.)

Editor's Note — The preamble to Laws of 1989, ch. 499, effective from and after October 1, 1989, provides as follows:

"WHEREAS, the Mississippi Department of Natural Resources (DNR), pursuant to the requirements of the Federal Water Pollution Control Act and amendments thereto, has placed numerous municipalities within the state under administrative orders to construct, replace, renovate or improve wastewater treatment and collection facilities which shall comply with the minimum standards under the federal law; and

"WHEREAS, many municipalities have initiated projects funded through a combination of federal, state and local funds made available through a revolving loan fund administered by the Department of Natural Resources; and

"WHEREAS, the refunds in the revolving loan fund have either been exhausted or encumbered and no such funds are currently available to the numerous municipalities that have not initiated projects to comply with the federal law; and

"WHEREAS, failure to comply with the deadlines mandated by the DNR administrative orders, which deadlines are generally in 1991, could result in severe monetary fines and penalties imposed under the federal law; and

"WHEREAS, the Legislature feels that this specific situation is of an emergency nature and that an immediate, viable and economical funding mechanism is necessary to allow affected municipalities to issue bonds without regard to the statutory debt limitation for compliance purposes;"

Section 49-2-7 provides that wherever the term "Mississippi Department of Natural Resources" appears in any law the same shall mean the Department of Environmental Quality.

Cross References — Requirement that county or municipal general obligation bonds for capital expenditures, such as for waste management facilities, be included in limitation of indebtedness as set forth in this section, see § 17-17-329.

Issuance by municipalities of bonds for payment of costs for closure, post-closure maintenance or corrective action for solid waste management facilities, see § 17-17-335.

Uniform system for issuance of negotiable notes or certificates of indebtedness, see §§ 17-21-51.

Limitation on county indebtedness, see § 19-9-5.

Application of the provisions of this section to the Mississippi Development Bank Act, see § 31-25-27.

Limitations on school bond indebtedness, see §§ 37-59-5 et seq.

Applicability of this section to debt owing to pledge of taxes to retire debt incurred pursuant to agreements executed under authority of Mississippi Hospital Equipment and Facilities Authority Act, §§ 41-73-1 et seq., see § 41-13-25.

Bonds for local governments freight rail service projects as evidence of indebtedness within this section, see § 57-44-7.

Application of the provisions of this section to evidences of indebtedness issued for borrowing money from the Department of Economic and Community Development, see § 57-61-37.

Federal Aspects — Federal Water Pollution Control Act, 33 USCS §§ 1251 et seq.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

Although a city proved that it was in good financial condition, as contemplated by Miss. Code Ann. § 21-33-303, annexation of a parcel would require the city to undertake the obligation of the parcel's utility district to provide water service; that would have been a burden to the city. Annexation of the parcel would have hampered the city in meeting its needs and increase costs to current residents. City of Laurel v. Sharon Waterworks Ass'n (In re Extension of the Boundaries of the City of Laurel), 17 So. 3d 529 (Miss. 2009).

2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

Chapter 104, Laws of 1932, limiting the power of counties to impose taxes, and

Chapter 235, Laws of 1932 (§ 4324, Code 1942), restricting the power of counties and municipalities to borrow money and to levy taxes for the payment thereof, are part of the same legislative plan, without either of which that plan would be incomplete, and therefore must be construed together. Yazoo & Miss. V. Ry. v. Claiborne County, 191 Miss. 277, 2 So. 2d 548 (1941).

With respect to an election for issuing bonds for water and light purposes a majority of the electors voting in the election was sufficient to authorize issuance of the bonds since those who were indifferent to the election to the extent that they did not go and vote were not entitled to control the result of those who voted in the election. In re Municipal Bonds, 188 Miss. 817, 196 So. 258 (1940).

The provision "or for the construction of special improvements primarily chargeable to the property benefited," etc., does not make it a necessary part of the requirement as to water and land that there should be a charge primarily made against the improvement or the plant or equipment or the proceeds thereof, and it would be possible to issue bonds for water and light purposes without making the proceeds derived from the utility being constructed or improved or benefited a general charge upon the taxpayers of the city. In re Municipal Bonds, 188 Miss. 817, 196 So. 258 (1940).

The establishing of a water, light and sewerage system is for a combined purpose and not subject to objection of being for a plurality of purposes. Green v. Hutson, 139 Miss. 471, 104 So. 171 (1925).

Municipal bonds not authorized by a majority of the electors and where not issued to pay outstanding debts are void. Heidelberg v. Batson, 119 Miss. 510, 81 So. 225 (1919).

An enabling act conferring upon the city of Bay St. Louis additional powers for the issuance of bonds, such bonds cannot be issued without an election otherwise provided by law. Sick v. City of Bay St. Louis, 113 Miss. 175, 74 So. 272 (1917).

The votes of disqualified persons voting at an election in a city on the question of a bond issue which would not affect the result of the election regardless of how they voted, does not render an election void. Griffith v. City of Vicksburg, 102 Miss. 1, 58 So. 781 (1912).

A city operating under a special charter authorizing the issuance of bonds is not restricted by provisions of the law under chapter or municipalities that are not applicable to such city. Love v. Holmes, 91 Miss. 535, 44 So. 835 (1907).

"Elector" in relation to issuance of bonds by municipalities means legally qualified voters. Greene v. Village of Rienzi, 87 Miss. 463, 40 So. 17, 112 Am. St. R. 449 (1906).

The charter of the city of Vicksburg having been amended by the adoption of this section and Code 1942, §§ 3416, 3419 and 3420 [superseded by Code 1942, §§ 3374-125, 3374-127, and 3374-128], substituting the word "amendment" for "chapter" in the last line of the section, it was held that the city was without power to issue bonds in excess of the statutory limit for the purpose of paying debts contracted after the amendment was adopted, although the revenues of the city to the amount of the aggregate of said debts, arising during the year in which they were contracted had been diverted from their payment and appropriated to other debts contracted before the amendment became effective. Smith v. City of Vicksburg, 86 Miss. 577, 38 So. 301 (1905).

A municipality may order an election under the provisions of this section [Code 1942, § 3598-02] submitting to the voters as a single proposition the issuance of bonds for two or more purposes. Yazoo City v. Lightcap, 82 Miss. 148, 33 So. 949 (1903).

The validity of municipal bonds is not affected by the fact that their issuance was authorized by an election at which the issuance of other bonds was also voted upon. Maybin v. City of Biloxi, 77 Miss. 673, 28 So. 566 (1900).

ATTORNEY GENERAL OPINIONS

The pledge of grant monies by a municipality is not properly characterized as an "indebtedness" under the statute and, therefore, would not be considered in calculating the floating indebtedness of the city. Criss, August 7, 1998, A.G. Op. #98-0447.

Express statutory provisions limiting the amount of bond issues and making the limitation applicable to all municipalities contained in the general statute supersede special charter provisions regarding the issuance of bonds. Gaylor, Dec. 15, 2006, A.G. Op. 06-0631.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 566 et seq.

64 Am. Jur. 2d, Public Securities and Obligations §§ 50 et seq.

CJS. 64 C.J.S., Municipal Corporations §§ 1654 et seq.

§ 21-33-305. Revenues of public utilities may be pledged for payment of bonds.

Whenever bonds shall be issued for the construction or purchase of waterworks, gas, light and power plants, or distribution systems, the governing authorities of the municipality so issuing them may provide by ordinance, contract or otherwise, that such bonds shall be secured by a pledge of the revenue of the utility to be constructed or purchased with the proceeds thereof, which pledge of revenue shall be in addition to the pledge of the full faith and credit of such municipality.

SOURCES: Codes, Hemingway's 1917, § 5973; 1930, § 2486; 1942, § 3598-03; Laws, 1914, ch. 147; Laws, 1950, ch. 493, § 3, eff from and after July 1, 1950.

Cross References — Issuance by municipalities of bonds for payment of costs for closure, post-closure maintenance or corrective action for solid waste management facilities, see § 17-17-335.

§ 21-33-307. Initiating procedures for issuance of bonds.

Before issuing any bonds for any of the purposes enumerated in Section 21-33-301, the governing authority of the issuing municipality shall adopt a resolution declaring its intention so to do, stating the amount of bonds proposed to be issued and the purpose for which the bonds are to be issued, and the date upon which the aforesaid authority proposes to direct the issuance of such bonds. Such resolution shall be published once a week for at least three (3) consecutive weeks in at least one (1) newspaper published in such municipality. The first publication of such resolution shall be made not less than twenty-one (21) days prior to the date fixed in such resolution for the issuance of the bonds, and the last publication shall be made not more than seven (7) days prior to such date. If no newspaper be published in such municipality, then such notice shall be given by publishing the resolution for the required time in some newspaper having a general circulation in such municipality and, in addition, by posting a copy of such resolution for at least twenty-one (21) days next preceding the date fixed therein at three (3) public places in such municipality. The publication of the resolution may be made as provided in Section 21-17-19. If ten percent (10%) of the qualified electors of the municipality, or fifteen hundred (1500), whichever is the lesser, shall file a written protest against the issuance of such bonds on or before the date specified in such resolution, then an election on the question of the bonds shall be called and held as is provided in Section 21-33-309. Notice of such election shall be signed by the clerk of the municipality and shall be published once a week for at least three (3) consecutive weeks in at least one (1) newspaper published in such municipality. The first publication of such notice shall be made not less than twenty-one (21) days prior to the date fixed for such election, and the last publication shall be made not more than seven (7) days prior to such date. If no newspaper is published in such municipality, then such notice shall be given by publishing the same for the required time in some newspaper having a general circulation in such municipality and published in the same or an adjoining county and, in addition, by posting a copy of such notice for at least twenty-one (21) days next preceding such election at three (3) public places in such municipality. If no protest be filed, then such bonds may be issued without an election on the question of the issuance thereof, at any time within a period of two (2) years after the date specified in the above-mentioned resolution. However, the governing authority of any municipality in its discretion may nevertheless call an election on such question, in which event it shall not be necessary to publish the resolution declaring its intention to issue such bonds as herein provided.

Under no circumstances shall any municipality exceed the bond limit as set by statute for municipalities.

SOURCES: Codes, Hemingway's 1921 Supp. § 6069l; 1930, § 2489; 1942, § 3598-05; Laws, 1920, ch. 206; Laws, 1950, ch. 493, § 5; Laws, 1966, ch. 599, §§ 1-4; Laws, 1988, ch. 457, § 7, eff from and after December 8, 1988 (the date the United States Attorney General interposed no objection to the amendment).

Cross References — Resolution, notice of issuance of bonds and notice of election for solid or hazardous waste treatment projects, see §§ 17-17-107, 17-17-109.

Issuance by municipalities of bonds for payment of costs for closure, post-closure maintenance or corrective action for solid waste management facilities, see § 17-17-335.

Uniform system for issuance of negotiable notes or certificates of indebtedness, see §§ 17-21-51 et seq.

Election being called by board of supervisors, see § 19-9-11.

Holding of bond election, see § 21-33-309.

Results of bond election, see § 21-33-311.

Applicability of this section to interim financing in anticipation of borrowing under § 21-41-41 for improvements authorized by § 21-41-3, see § 21-41-45.

Application of this section to elections on leasing of facilities by municipalities, see § 31-8-11.

Application of the provisions of this section to the Mississippi Development Bank Act, see § 31-25-27.

Notice of election on school bond issue, see § 37-59-13.

Application of the provisions of this section to evidences of indebtedness issued for borrowing money from the Department of Economic and Community Development, see § 57-61-37.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

City of Hattiesburg could lawfully proceed with issuance of general obligation industrial park bonds under Chapter 886, Local and Private Laws of Mississippi, Regular Session 1984, which dispenses with the necessity for a bond issue election, except upon petition of 10 percent of the city's registered voters. Brandon v. City of Hattiesburg, 493 So. 2d 324 (Miss. 1986).

The rule requiring petition of 10 percent, or 1,500, whichever is less, of qualified electors of the municipality for calling an election on bond issues, as appears in Mississippi Code § 21-33-307, is enforceable only when a municipality purports to issue bonds for one of the 16 general categories of purposes found in Mississippi Code § 21-33-301; none of which is so elastic as to include industrial park purposes contemplated by the City of Hattiesburg in present case. Brandon v. City of Hattiesburg, 493 So. 2d 324 (Miss. 1986).

That a newspaper notice of intention to issue bonds, in stating existing indebtedness, used a period instead of a comma in the figure $36,000, is immaterial. In re $30,000 Rd. & Bridge Bonds of 1960, 242 Miss. 125, 133 So. 2d 267 (1961).

Variance between a resolution declaring an intention to issue bonds for the purpose of buying the necessary machinery for road work and the notice given thereof by adding the words "including a motor grader" is immaterial. In re $30,000 Rd. & Bridge Bonds of 1960, 242 Miss. 125, 133 So. 2d 267 (1961).

Failure of resolution directing issuance of municipal bonds to state that notice of bond election was given in designated way and for required time, renders bonds invalid. Mississippi Power & Light Co. v. Town of Coldwater, 234 Miss. 615, 106 So. 2d 375 (1958), suggestion of error sustained, 234 Miss. 615, 112 So. 2d 222 (1958).

The requirement that notice of election be published in some newspaper having a general circulation in the municipality is not met by publication in a newspaper shown only to have been published in the county in which the municipality is situated. Mississippi Power & Light Co. v. Town of Coldwater, 234 Miss. 615, 106 So. 2d 375 (1958), suggestion of error sustained, 234 Miss. 615, 112 So. 2d 222 (1958).

2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

Issuance of a note by county to pay for road machinery was not invalid because the note was an attempt to create an interest bearing debt in violation of § 4320 Code of 1942 as amended by ch 473 Laws of 1946, because no election was held, inasmuch as the statute authorizing the purchase did not require election as condition precedent to issuance of interest bearing note for a purchase price. Covington County v. Mississippi Rd. Supply Co., 213 Miss. 583, 57 So. 2d 318 (1952), corrected, 59 So. 2d 325 (Miss. 1952).

The fact that a decree of validation erroneously bore date of May 12 instead of June 12, evidently due to a typographical error, did not show that the notice to the taxpayer was not published as required by law prior to the hearing before the chancellor, where such decree of validation recited all the necessary jurisdictional facts. Town of Decatur v. Brogan, 184 Miss. 402, 185 So. 809 (1939).

Where a municipality was in the status of a lessee by reason of its liability for reasonable compensation for the use of a fire engine purchased under an invalid contract, it was not necessary to submit to the voters the question of making a lease of the equipment purchased thereunder or of allowing the municipality to be held to the obligation of a lessee, notwithstanding that the contract attempted to create an interest bearing obligation. American-LaFrance, Inc. v. City of Phila., 183 Miss. 207, 184 So. 620 (1938).

Where a contract for the purchase of a fire engine was held invalid because of omission of statutory requirements, the municipality was liable for reasonable compensation for the use of the property and had the status of a lessee, where the transaction was without corruption, and was within the object authorized by law, and not a debtor in an interest-bearing debt incurred without the authorization of the electors and at an election called for that purpose, notwithstanding that the contract was conceded an attempt to create an obligation within this section. American-LaFrance, Inc. v. City of Phila., 183 Miss. 207, 184 So. 620 (1938).

Bank, which advanced funds with which school district purchased land for teachers' home, took trust deed to secure loan, and collected interest thereon without petition or election by qualified voters as required by statute, held accountable in representative suit by taxpayers for interest collected and without any rights against school district since loan was void. Toler v. Love, 170 Miss. 252, 154 So. 711, 95 A.L.R. 1416 (1934).

Adjudication of board of mayor and aldermen of no sufficient protest against bond issuance is not subject to collateral attack. Green v. Hutson, 139 Miss. 471, 104 So. 171 (1925).

Construing the statute with others it is a necessary prerequisite to the issuance of school district bonds that there be an election. Barrett v. Cedar Hill Consol. Sch. Dist., 123 Miss. 370, 85 So. 125 (1920).

After notice of the proposed issuance of municipal bonds if twenty per centum of the taxpayers whether electors or not petition against the same, the municipal authorities can not rightfully issue the bonds for any amount until authorized by affirmative vote of two-thirds of the electors. Town of Clarksdale v. Broaddus, 77 Miss. 667, 28 So. 954 (1900).

Before a municipality can rightfully issue bonds for any amount, under this provision authorizing and regulating such issuance, it must first publish notice of the proposed issuance as provided by a subsequent provision [§ 3604, superseded by § 3598-05], so that taxpayers may petition against same. Town of Clarksdale v. Broaddus, 77 Miss. 667, 28 So. 954 (1900).

Even where there be no petition by the taxpayers against the same, where the issuance including all outstanding bonds will exceed in amount the prescribed proportion of the assessed value of the property, the bonds cannot rightfully be issued until authorized by vote of two-thirds of the electors. Town of Clarksdale v. Broaddus, 77 Miss. 667, 28 So. 954 (1900).

ATTORNEY GENERAL OPINIONS

Where ten percent of the qualified electors of a town filed a written protest against the issuance of bonds following publication of the notice of the intention to issue the bonds, the governing authorities, if they choose to go forward with the bond issue, must call and hold an election; if three-fifths of the qualified electors who vote in the election vote in favor of the issuance of bonds, then the governing authorities in their discretion may issue the bonds, either in whole or in part, within two years from the date of the election or within two years after the final favorable termination of any litigation affecting the issuance of the bonds. Tanner, Mar. 22, 2002, A.G. Op. #02-0089.

The language in this section which requires the publication of the notice of election prior to the issuance of municipal bonds is mandatory, and failure to meet this requirement would be fatal. An election on the question held in the absence of such a publication would be invalid to authorize the issuance of the bonds. Bourgeois, July 30, 2004, A.G. Op. 04-0358.

RESEARCH REFERENCES

ALR. Rescission of vote authorizing school district or other municipal bond issue, expenditure, or tax. 68 A.L.R.2d 1041.

Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 644 et seq.

64 Am. Jur. 2d, Public Securities and Obligations §§ 113 et seq.

15A Am. Jur. Legal Forms 2d, Public Securities and Obligations §§ 214:10 et seq. (proceedings prior to issuance of bonds).

18A Am. Jur. Pl & Pr Forms (Rev), Notice, Form 1 (notice, general form).

18A Am. Jur. Pl & Pr Forms (Rev), Notice, Forms 24, 25, (affidavit of notice by posting or publication).

20A Am. Jur. Pl & Pr Forms (Rev), Public Securities and Obligations, Forms 41, 42 (complaint, petition, or declaration for validation and confirmation of proceedings for bond issue).

§ 21-33-309. Holding of bond election.

The election provided for by Section 21-33-307 shall be held, as far as is practicable, in the same manner as other elections are held in municipalities. At such election, all qualified electors of such municipality may vote. The ballots used at such election shall have printed thereon a brief statement of the amount and purpose of the proposed bond issue and the words "FOR THE BOND ISSUE" and "AGAINST THE BOND ISSUE," and the voter shall vote by placing a cross (X) or check mark (√) opposite his choice on the proposition.

SOURCES: Codes, Hemingway's 1921 Supp. § 6069m; 1930, § 2490; Codes, 1942, § 3598-06; Laws, 1920, ch. 206; Laws, 1942, ch. 230; Laws, 1950, ch. 493, § 6, eff from and after July 1, 1950.

Cross References — Conduct of election on issuance of bonds for solid or hazardous waste treatment projects, see § 17-17-111.

Issuance by municipalities of bonds for payment of costs for closure, post-closure maintenance or corrective action for solid waste management facilities, see § 17-17-335.

Manner of holding county bond election, see § 19-9-15.

Procedures for initiating issuance of bonds, see § 21-33-307.

Applicability of this section to interim financing in anticipation of borrowing under § 21-41-41 for improvements authorized by § 21-41-3, see § 21-41-45.

Application of this section to elections on leasing of facilities by municipalities, see § 31-8-11.

Application of the provisions of this section to the Mississippi Development Bank Act, see § 31-25-27.

Manner of holding election on school bond issue, see § 37-59-15.

Application of the provisions of this section to evidences of indebtedness issued for borrowing money from the Department of Economic and Community Development, see § 57-61-37.

ATTORNEY GENERAL OPINIONS

Where ten percent of the qualified electors of a town filed a written protest against the issuance of bonds following publication of the notice of the intention to issue the bonds, the governing authorities, if they choose to go forward with the bond issue, must call and hold an election; if three-fifths of the qualified electors who vote in the election vote in favor of the issuance of bonds, then the governing authorities in their discretion may issue the bonds, either in whole or in part, within two years from the date of the election or within two years after the final favorable termination of any litigation affecting the issuance of the bonds. Tanner, Mar. 22, 2002, A.G. Op. #02-0089.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations §§ 119 et seq.

15A Am. Jur. Legal Forms 2d, Public Securities and Obligations § 214:16 (notice of bond election).

20A Am. Jur. Pl & Pr Forms (Rev), Public Securities and Obligations, Form 44 (complaint, petition, or declaration for declaratory judgment as to validity of approval by electors of act authorizing bond issue and to restrain issuance if invalid).

CJS. 64 C.J.S., Municipal Corporations §§ 2145 et seq.

§ 21-33-311. Results of election.

When the results of the election on the question of the issuance of such bonds shall have been canvassed by the election commissioners of such municipality and certified by them to the governing authorities of such municipality, it shall be the duty of such governing authorities to determine and adjudicate whether or not three-fifths of the qualified electors who voted in such election voted in favor of the issuance of such bonds. Unless three-fifths of the qualified electors who voted in such election shall have voted in favor of the issuance of such bonds, then such bonds shall not be issued. Should three-fifths of the qualified electors who vote in such election vote in favor of the issuance of such bonds, then the governing authorities of the municipality may issue such bonds, either in whole or in part, within two years from the date of such election or within two years after the final favorable termination of any litigation affecting the issuance of such bonds, as such governing authorities shall deem best.

SOURCES: Codes, Hemingway's 1921 Supp. § 6069n; 1930, § 2491; 1942, § 3598-08; Laws, 1920, ch. 206; Laws, 1932, ch. 222; Laws, 1935, ch. 64; Laws, 1938, ch. 136; Laws, 1938, Ex. Sess., ch. 73; Laws, 1950, ch. 493, § 8, eff from and after July 1, 1950.

Cross References — Determination of results of election on issuance of bonds for solid or hazardous waste treatment project, see § 17-17-113.

Issuance by municipalities of bonds for payment of costs for closure, post-closure maintenance or corrective action for solid waste management facilities, see § 17-17-335.

Results of county bond election, see § 19-9-17.

Applicability of this section to interim financing in anticipation of borrowing under § 21-41-41 for improvements authorized by § 21-41-3, see § 21-41-45.

Application of this section to elections on leasing of facilities by municipalities, see § 31-8-11.

Application of the provisions of this section to the Mississippi Development Bank Act, see § 31-25-27.

Results of election on school bond issue, see § 37-59-17.

Application of the provisions of this section to evidences of indebtedness issued for borrowing money from the Department of Economic and Community Development, see § 57-61-37.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

With respect to an election for issuing bonds for water and light purposes a majority of the electors voting in the election was sufficient to authorize issuance of the bonds since those who were indifferent to the election to the extent that they did not go and vote were not entitled to control the result of those who voted in the election. In re Municipal Bonds, 188 Miss. 817, 196 So. 258 (1940).

The provision "or for the construction of special improvements primarily chargeable to the property benefited," etc., does not make it a necessary part of the requirement as to water and land that there should be a charge primarily made against the improvement or the plant or equipment or the proceeds thereof, and it would be possible to issue bonds for water and light purposes without making the proceeds derived from the utility being constructed or improved or benefited a general charge upon the taxpayers of the city. In re Municipal Bonds, 188 Miss. 817, 196 So. 258 (1940).

Year within which municipal bonds might be issued after favorable determination of litigation did not begin to run until issuance of mandate fifteen days after Supreme Court's decision, which was time allowed for filing of suggestion of error. Love v. Mayor & Bd. of Aldermen, 166 Miss. 322, 148 So. 382 (1933).

Purpose of statute providing for issuance of municipal bonds within one year was to prevent issuance after reason which prompted electorate to assent thereto had disappeared. Love v. Mayor & Bd. of Aldermen, 166 Miss. 322, 148 So. 382 (1933).

Where contracts for sale of municipal bonds were made within year after favorable determination of litigation, there was an "issue" of the bonds within the year, though mechanical and ministerial work of printing, signing, and delivering the bonds remained to be done after expiration of the year. Love v. Mayor & Bd. of Aldermen, 166 Miss. 322, 148 So. 382 (1933).

ATTORNEY GENERAL OPINIONS

Where ten percent of the qualified electors of a town filed a written protest against the issuance of bonds following publication of the notice of the intention to issue the bonds, the governing authorities, if they choose to go forward with the bond issue, must call and hold an election; if three-fifths of the qualified electors who vote in the election vote in favor of the issuance of bonds, then the governing authorities in their discretion may issue the bonds, either in whole or in part, within two years from the date of the election or within two years after the final favorable termination of any litigation affecting the issuance of the bonds. Tanner, Mar. 22, 2002, A.G. Op. #02-0089.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations §§ 139 et seq.

§ 21-33-313. Details of municipal bonds; supplemental powers conferred in issuance of bonds.

All bonds issued pursuant to this article shall be lithographed or engraved, and printed in two (2) or more colors, to prevent counterfeiting, and shall be in such denominations as shall be specified by the governing authorities of the municipality. Such bonds shall be registered as issued, be numbered in a regular series from one (1) upward, and every such bond shall specify on its face the purpose for which it was issued and the total amount authorized to be issued, and shall be made payable to bearer. Interest shall be evidenced by proper coupons thereto attached. The governing authorities of such municipality shall annually levy a special tax upon all of the taxable property within the municipality, which shall be sufficient to provide for the payment of the principal of and the interest on such bonds according to the terms thereof.

Notwithstanding the foregoing provisions of this section, bonds referred to hereinabove may be issued pursuant to the supplemental powers and authorizations conferred by the provisions of the Registered Bond Act, being Sections 31-21-1 through 31-21-7.

SOURCES: Codes, 1892, § 3015; 1906, § 3416; Hemingway's 1917, § 5975; 1930, § 2487; 1942, § 3598-04; Laws, 1950, ch. 493, § 4; Laws, 1972, ch. 388, § 1; Laws, 1983, ch. 494, § 10, eff from and after passage (approved April 11, 1983).

Cross References — Issuance by municipalities of bonds for payment of costs for closure, post-closure maintenance or corrective action for solid waste management facilities, see § 17-17-335.

Details of county bonds, see § 19-9-7.

Details of ordinance and form of bonds in connection with public utilities' systems, see §§ 21-27-41, 21-27-45.

Bonds' maturities and interest, see § 21-33-315.

Application of the provisions of this section to the Mississippi Development Bank Act, see § 31-25-27.

Details of school bonds, see § 37-59-25.

Application of the provisions of this section to evidences of indebtedness issued for borrowing money from the Department of Economic and Community Development, see § 57-61-37.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations §§ 148 et seq.

CJS. 64 C.J.S., Municipal Corporations §§ 2168 et seq.

§ 21-33-315. Maturities and interest.

All bonds issued by a municipality shall mature annually, with all maturities not longer than twenty (20) years, with not less than one-fiftieth (1/50) of the total issue to mature each year during the first five (5) years of the life of such bonds, not less than one-twenty-fifth (1/25) of the total issue to mature each year during the succeeding ten-year period of the life of such bonds, and the remainder to be amortized, as to principal and interest, into approximately equal annual payments, one (1) payment to mature each year for the remaining life of such bonds. However, in cases where bonds shall be issued or dated subsequent to the date fixed for making the municipal tax levy in the year in which such bonds are to be issued, the first maturity date of not less than one-fiftieth (1/50) of the total issue, may be fixed for any period not exceeding two (2) years from the date of the bonds with the same schedule of subsequent maturities as herein above set forth. Such bonds shall not bear a greater overall maximum interest rate to maturity than that allowed in Section 75-17-101, Mississippi Code of 1972. No bond shall bear more than one (1) rate of interest. Each bond shall bear interest from its date to its stated maturity date at the interest rate specified in the bid. All bonds of the same maturity shall bear the same rate of interest from date to maturity. All interest accruing on such bonds so issued shall be payable semiannually or annually, except that the first interest coupon attached to any such bond may be for any period not exceeding one (1) year.

No interest payment shall be evidenced by more than one (1) coupon and neither cancelled nor supplemental coupons shall be permitted. The lowest interest rate specified for any bonds issued shall not be less than seventy percent (70%) of the highest interest rate specified for the same bond issue. The interest rate of any one (1) interest coupon shall not exceed the maximum interest rate allowed on such bonds.

Each interest rate specified in any bid must be in multiples of one-eighth of one percent (1/8 of 1%) or in multiples of one-tenth of one percent (1/10 of 1%). The denomination, form, and place, or places, of payment of such bonds shall be fixed in the resolution or ordinance of the governing authorities issuing such bonds. Such bonds shall be executed by the manual or facsimile signature of the mayor and clerk of such municipality, with the seal of the municipality affixed thereto. At least one (1) signature on each bond shall be a manual signature, as specified in the resolution. The coupons may bear only the facsimile signatures of such mayor and clerk. No bonds shall be issued and sold under the provisions of this article for less than par and accrued interest.

SOURCES: Codes, Hemingway's 1921 Supp. § 6069n; 1930, § 2491; Codes, 1942, § 3598-09; Laws, 1920, ch. 206; Laws, 1932, ch. 222; Laws, 1935, ch. 64; Laws, 1938, ch. 136; Laws, 1938, Ex. Sess., ch. 73; Laws, 1950, ch. 493, § 9; Laws, 1958, ch. 511; Laws, 1970, ch. 498, § 1; Laws, 1975, ch. 380; Laws, 1976, ch. 489; Laws, 1980, ch. 523, § 1; Laws, 1981, ch. 471, § 1; Laws, 1982, ch. 434, § 8; Laws, 1983, ch. 541, § 12, eff from and after passage (approved April 25, 1983).

Cross References — Issuance by municipalities of bonds for payment of costs for closure, post-closure maintenance or corrective action for solid waste management facilities, see § 17-17-335.

Maturities and interest on county bonds, see § 19-9-19.

Uniform system for issuance of municipal bonds, see § 21-33-301.

Limitation of municipal indebtedness, see § 21-33-303.

Details of municipal bonds, see § 21-33-313.

Maturity and interest on municipal bonds issued for special improvements, see § 21-41-43.

Replacement of bond or warrant, lost, destroyed or mutilated, see §§ 25-55-19 et seq.

Validation of bond issues, see §§ 31-13-3 et seq.

Application of the provisions of this section to the Mississippi Development Bank Act, see § 31-25-27.

Maturities and interest of school bonds, see § 37-59-27.

Application of the provisions of this section to evidences of indebtedness issued for borrowing money from the Department of Economic and Community Development, see § 57-61-37.

Limitation on the maximum interest rate to maturity on obligations issued under the provisions of this section, see § 75-17-101.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

Municipal bonds issued under this section providing that municipalities may on issuing them make a part mature annually and prohibiting in such case the calling in of the bonds until maturity, are not void because of a recital to the effect that the municipality reserves the right after a certain date to pay off and cancel any of the bonds. Board of Mayor v. Fulton, 79 Miss. 511, 31 So. 102 (1902).

It is not a defense to an action on municipal bonds by a bona fide holder without notice that the municipality was at the time of their issuance a separate school district, that the bonds were issued to raise funds with which to build a schoolhouse, that the debt incurred by their issuance exceeded a three-mill tax for their levy on the taxable property of the municipality, and that the consent of a majority of the taxpayers was not given to authorize the levy of a tax exceeding three mills on the dollar for the erection of the schoolhouse or the issuance of the bonds. Board of Mayor v. Fulton, 79 Miss. 511, 31 So. 102 (1902).

A void recital in municipal bonds does not render the bonds invalid. Board of Mayor v. Fulton, 79 Miss. 511, 31 So. 102 (1902).

ATTORNEY GENERAL OPINIONS

Since town of Bay Springs is issuing certificates of indebtedness, town is not required to follow requirements of Section 4 of Senate Bill 2879, which apply to issuance of bonds; town of Bay Springs may therefore accept bid from Southern Pine Electric Power Association of 0 percent interest rate without violating statute. Houston, August 16, 1990, A.G. Op. #90-0574.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations §§ 155, 164 et seq.

CJS. 64 C.J.S., Municipal Corporations §§ 2186, 2190.

§ 21-33-317. Proceeds of bonds not to be diverted.

The proceeds of any bonds issued by a municipality shall be placed in the municipal treasury or depository, if there be one, as a special fund, and shall be used for no other purpose than that for which such bonds were authorized to be issued. If the governing authorities of such municipality, or any member thereof, or any other officer, shall wilfully divert, or aid or assist in diverting any such fund, or any part thereof, to any purpose other than that for which such bonds were authorized to be issued, then such person shall be guilty of a felony and, upon conviction, shall be punished by imprisonment in the state penitentiary for a term not exceeding five years and, in addition, he shall be liable personally and on his official bond for the amount so diverted. Any member of such governing authorities may escape the penalty provided for above by requesting and having his vote recorded in the negative on any illegal diversion of the proceeds of such bonds.

SOURCES: Codes, Hemingway's 1921 Supp. § 6069o; 1930, § 2492; 1942, § 3598-10; Laws, 1920, ch. 206; Laws, 1950, ch. 493, § 10, eff from and after July 1, 1950.

Cross References — Issuance by municipalities of bonds for payment of costs for closure, post-closure maintenance or corrective action for solid waste management facilities, see § 17-17-335.

Comparable provisions for counties, see § 19-9-21.

Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

School bonds being used only for purpose issued, see § 37-59-29.

Application of the provisions of this section to evidences of indebtedness issued for borrowing money from the Department of Economic and Community Development, see § 57-61-37.

ATTORNEY GENERAL OPINIONS

In order to insure that statutory provisions are complied with, any procedure for disbursal of bond funds to hospital must insure that any and all expenditures of funds are for purposes specified in resolution pertaining to bond issue in question; if contemplated procedure does not insure that funds will not be diverted for improper use, it should not be adopted. Peden, Feb. 7, 1990, A.G. Op. #90-0074.

§ 21-33-319. Transfer of residue of bond proceeds.

Whenever a balance shall remain of the proceeds of any bond issue after the purpose for which such bonds were issued shall have been accomplished, such balance shall forthwith be transferred to the bond and interest fund applicable to such bond issue.

SOURCES: Codes, 1942, § 3598-11; Laws, 1950, ch. 493, § 11, eff from and after July 1, 1950.

Cross References — Issuance by municipalities of bonds for payment of costs for closure, post-closure maintenance or corrective action for solid waste management facilities, see § 17-17-335.

Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

Application of the provisions of this section to evidences of indebtedness issued for borrowing money from the Department of Economic and Community Development, see § 57-61-37.

§ 21-33-321. Bond and interest fund may be used to buy outstanding bonds.

Whenever there shall be on hand in any bond and interest fund an amount in excess of the amount which will be required for expenditure therefrom within the then next succeeding twelve months, the governing authorities of the municipality may use such excess amount to purchase the outstanding bonds of such municipality which are payable from such fund whenever, in the judgment of the governing authorities, the best interest of the municipality would be served thereby. When such bonds are purchased, they shall be cancelled and retired and shall not thereafter be resold or reissued.

SOURCES: Codes, 1942, § 3598-12; Laws, 1950, ch. 493, § 12, eff from and after July 1, 1950.

Cross References — Issuance by municipalities of bonds for payment of costs for closure, post-closure maintenance or corrective action for solid waste management facilities, see § 17-17-335.

Residue of county's bond proceeds being transferred to bond and interest fund, see § 19-9-23.

Comparable provision for county bonds, see § 19-9-25.

Retirement of bonds, see §§ 31-17-1 et seq.

Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

When residue of school bond proceeds may be transferred, see § 37-59-33.

Application of the provisions of this section to evidences of indebtedness issued for borrowing money from the Department of Economic and Community Development, see § 57-61-37.

§ 21-33-323. Investment of surplus funds.

(1) Whenever any municipality shall have on hand any bond and interest funds, any funds derived from the sale of bonds, special funds, or any other funds in excess of the sums which will be required for immediate expenditure and which are not needed or cannot by law be used for the payment of the current obligations or expenses of such municipality, the governing authorities of such municipality shall have the power and authority to invest such excess funds in any bonds or other direct obligations of the United States of America or the State of Mississippi, or of any county or municipality of this state, or of any school district, which such county or municipal or school district bonds have been approved by a reputable bond attorney or have been validated by a decree of the chancery court, or in obligations issued or guaranteed in full as to principal and interest by the United States of America which are subject to a repurchase agreement with a qualified depository. In any event the bonds or obligations in which such funds are invested shall mature or be redeemable prior to the time the funds so invested will be needed for expenditure.

(2) However, such excess funds may first be offered for investment in interest-bearing accounts with or through municipal depositories serving in accordance with Section 27-105-353 at a rate of interest not less than a simple interest rate numerically equal to the average bank discount rate on United States Treasury bills of comparable maturity. The rate of interest established herein shall be the minimum rate of interest and there shall be no maximum rate of interest.

(3) Such excess funds may also be invested in interest-bearing accounts in or through state depositories located in such municipality to the same extent as such depositories are eligible for invested state funds.

(4) When bonds or other obligations have been so purchased, the same may be sold or surrendered for redemption at any time by order or resolution of the governing authorities of the municipality, and the mayor of the

municipality, when authorized by such order or resolution, shall have the power and authority to execute all instruments and take such other action as may be necessary to effectuate the sale or redemption thereof.

(5) When such bonds or other obligations are sold or redeemed, the proceeds thereof, including accrued interest thereon, shall be paid into the same fund as that from which the investment was made and shall in all respects be dealt with as are other monies in such fund.

(6) Except as hereinafter provided, any interest derived from the investments authorized in this section may, as an alternative, be deposited into the general fund of the municipality. Any interest derived from the investment of sums received under the terms of the federal State and Local Fiscal Assistance Act of 1972 and any subsequent revisions or reenactments of that act shall be paid into the same fund as that from which the investment was made. Any interest derived from the investment of school bond funds shall be handled as provided in Section 37-59-43. Any interest derived from investment of other bond proceeds or from investment of any bond and interest fund, bond reserve fund or bond redemption sinking fund shall be deposited either in the same fund from which the investment was made or in the bond and interest fund established for payment of the principal or interest on the bonds. Any interest derived from special purpose funds which are outside the function of general municipal government shall be paid into that special purpose fund.

(7) The authority granted by this section shall be cumulative and in addition to any other law relating to the investment of funds by municipalities.

SOURCES: Codes, Hemingway's, 1917, §§ 5893, 5894; 1930, §§ 2503, 2504; 1942, § 3598-14; Laws, 1914, ch. 154; Laws, 1934, ch. 327; Laws, 1942, ch. 225; Laws, 1950, ch. 493, § 14; Laws, 1952, ch. 377; Laws, 1975, ch. 421; Laws, 1977, ch. 426, § 2; Laws, 1988, ch. 393, § 1; Laws, 1990, ch. 416, § 1; Laws, 2007, ch. 426, § 2; Laws, 2012, ch. 413, § 1, eff from and after July 1, 2012.

Cross References — Issuance by municipalities of bonds for payment of costs for closure, post-closure maintenance or corrective action for solid waste management facilities, see § 17-17-335.

Comparable provisions for county surplus funds, see § 19-9-29.

Investing certain funds in defense bonds, see § 31-19-5.

Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

Investment of funds surplus to needs of school districts, see § 37-59-43.

Application of the provisions of this section to evidences of indebtedness issued for borrowing money from the Department of Economic and Community Development, see § 57-61-37.

Federal Aspects — State and Local Fiscal Assistance Act of 1972 P.L. 92-512, can be found in a note to 31 USCS § 6702.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

Under § 3612 and § 4347, Code of 1942, a city has authority to make loan to a private individual and to accept assignment of promissory note and a trust deed to realty securing the same. Pace v. Wedgeworth, 198 Miss. 1, 20 So. 2d 842 (1945).

Court must presume that municipality, through its officers, in accepting assignment of promissory note and trust deed to realty securing the same, brought itself within the authorization of § 3612 and § 4347, Code of 1942, pertaining to the loaning of funds. Pace v. Wedgeworth, 198 Miss. 1, 20 So. 2d 842 (1945).

Supervisors held not liable personally for transfers from county road and bridge bond sinking fund to other unrelated county funds, since transfers were loans within statute, notwithstanding transfers were irregular and statutory requirements for loans from sinking funds were not complied with. Gully v. Thomas, 171 Miss. 749, 158 So. 465 (1935).

Loans of county sinking funds, made in manner violative of Code sections, held illegal, so that cause of action for their recovery accrued at once to county. Gully v. Bew, 170 Miss. 427, 154 So. 284 (1934), suggestion of error overruled, 170 Miss. 427, 154 So. 721 (1934); Harper v. Gully, 154 So. 288 (Miss. 1934); Gully v. Bradford, 155 So. 172 (Miss. 1934).

Where loans of county sinking funds by board of supervisors were illegally made, board could not, by extending time for payment, divest itself of immediate right to sue for recovery thereof, and such extension did not suspend or postpone limitation period for State Tax Collector's suit to foreclose trust deeds securing such loans. Gully v. Bew, 170 Miss. 427, 154 So. 284 (1934), suggestion of error overruled, 170 Miss. 427, 154 So. 721 (1934); Harper v. Gully, 154 So. 288 (Miss. 1934); Gully v. Bradford, 155 So. 172 (Miss. 1934).

Chancery clerk held not liable for ministerial act of issuing and delivering warrants for loans of county sinking funds on orders of board of supervisors, though loans were made in illegal manner, there being no charge of bad faith on part of clerk. Gully v. Bew, 170 Miss. 427, 154 So. 284 (1934), suggestion of error overruled, 170 Miss. 427, 154 So. 721 (1934); Harper v. Gully, 154 So. 288 (Miss. 1934); Gully v. Bradford, 155 So. 172 (Miss. 1934).

County boards of supervisors have jurisdiction of lending sinking funds of county on security of real estate. Gully v. Bew, 170 Miss. 427, 154 So. 284 (1934), suggestion of error overruled, 170 Miss. 427, 154 So. 721 (1934); Harper v. Gully, 154 So. 288 (Miss. 1934); Gully v. Bradford, 155 So. 172 (Miss. 1934).

Members of county board of supervisors, having jurisdiction of lending county sinking funds on security of realty, are not personally liable for errors of judgment in exercise of such jurisdiction. Gully v. Bew, 170 Miss. 427, 154 So. 284 (1934), suggestion of error overruled, 170 Miss. 427, 154 So. 721 (1934); Harper v. Gully, 154 So. 288 (Miss. 1934); Gully v. Bradford, 155 So. 172 (Miss. 1934).

Members of county board of supervisors held not liable for failure to collect promptly illegal loans made by prior board, there being no charge that subsequent board knew that proceeds of foreclosure sale would be insufficient or that borrower was insolvent. Gully v. Bew, 170 Miss. 427, 154 So. 284 (1934), suggestion of error overruled, 170 Miss. 427, 154 So. 721 (1934); Harper v. Gully, 154 So. 288 (Miss. 1934); Gully v. Bradford, 155 So. 172 (Miss. 1934).

Members of board of supervisors lending sinking funds on security of trust deeds in manner violating Code, held not liable for making loans, since, in making appropriations, board members acted judicially. Gully v. Bew, 170 Miss. 427, 154 So. 284 (1934), suggestion of error overruled, 170 Miss. 427, 154 So. 721 (1934); Harper v. Gully, 154 So. 288 (Miss. 1934); Gully v. Bradford, 155 So. 172 (Miss. 1934).

Attempted borrowing of money from county sinking fund on county's unsecured note, to procure money for paying school salaries, held unauthorized. Board of Supvrs. v. Adams, 164 Miss. 162, 144 So. 476 (1932).

ATTORNEY GENERAL OPINIONS

A mayor does not have authority to transfer funds from one account, such as the park account, to the general funds or another account without prior approval by the board of aldermen. Willis, Mar. 8, 2002, A.G. Op. #02-0055.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations § 109.

§ 21-33-325. Borrowing in anticipation of taxes.

The governing authorities of any municipality of this state shall have the power and authority to borrow money for the current expenses of such municipality in anticipation of the ad valorem taxes to be collected for the then current fiscal year. The governing authority of the municipality may borrow such money, as hereinbefore provided, from any available fund in the municipal treasury, or from any other source, and such loan shall be repaid in the manner herein provided. The money so borrowed shall bear interest at a rate not greater than that allowed in Section 75-17-105, Mississippi Code of 1972, and shall be repaid not later than the following March 15, out of the first moneys collected by reason of the tax levy in anticipation of which such money is borrowed, and such money shall be used for no other purpose than the payment of the current expenses of such municipality. The amount borrowed under the provisions of this section shall in no event exceed fifty percent (50%) of the anticipated, but then uncollected, revenue to be produced by the then current tax levy, or levies, against which such money is borrowed. In borrowing money under the provisions hereof, it shall not be necessary to publish notice of intention so to do or to secure the consent of the qualified electors, either by election or otherwise. Such borrowing may be authorized by resolution of the governing authorities and may be evidenced by a negotiable note, or notes, signed and executed in such form as may be prescribed in such resolution. Money may be borrowed in anticipation of ad valorem taxes under the provisions of this section, regardless of whether or not such borrowing shall create an indebtedness in excess of statutory limitations.

Money may likewise be borrowed by the governing authorities of any municipality, as herein provided, for the purpose of paying current interest maturities on any bonded indebtedness of such municipality in anticipation of the collection of taxes for the retirement of such bonded indebtedness and the payment of any interest thereon.

SOURCES: Codes, Hemingway's 1917, § 6068; 1930, §§ 2500, 2501, 2502; 1942 § 3598-13; Laws, 1916, ch. 150; Laws, 1918, ch. 178; Laws, 1926, ch. 272; Laws, 1934, ch. 320; Laws, 1950, ch. 493, § 13; Laws, 1981, ch. 462, § 4; Laws,

1982, ch. 434, § 9; Laws, 1983, ch. 541, § 13; Laws, 1985, ch. 519, § 1; Laws, 1987, ch. 530, eff from and after passage (approved April 20, 1987).

Editor's Note — The former last paragraph of this section was repealed by its own terms, effective August 1, 1987.

Cross References — Power of a county to borrow money in anticipation of taxes, see § 19-9-27.

Application of the provisions of this section to the Mississippi Development Bank Act, see § 31-25-27.

Municipal officials borrowing for schools' expenses in anticipation of taxes, see §§ 37-59-37 et seq.

Rate of interest which the notes described in this section shall bear, see § 75-17-105.

§ 21-33-325.1. Borrowing in anticipation of taxes by certain municipalities.

(1) The governing authorities of a municipality that was formerly a census-designated place, as identified by the United States Census Bureau, and is incorporated during calendar year 2011, 2012 or 2013, shall have the power and authority to borrow money for the current expenses of the municipality from the date of incorporation in anticipation of the ad valorem taxes to be collected for the then current fiscal year and the next succeeding fiscal year. The governing authorities of the municipality may borrow such money from any available fund in the municipal treasury, or from any other source, and such loan shall be repaid in the manner provided in subsection (2) of this section.

(2) The money borrowed shall bear interest at a rate not greater than that allowed in Section 75-17-105 and shall be repaid not later than the following March 15, out of the first monies collected by reason of the tax levy in anticipation of which such money is borrowed, and such money shall be used for no other purpose than the payment of the current expenses of such municipality. The amount borrowed under the provisions of this section shall in no event exceed fifty percent (50%) of the anticipated, but then uncollected, revenue to be produced by the then current tax levy, or levies, against which such money is borrowed.

(3) In borrowing money under the provisions of this section, it shall not be necessary to publish notice of intention so to do or to secure the consent of the qualified electors, either by election or otherwise. Such borrowing may be authorized by resolution of the governing authorities and may be evidenced by a negotiable note, or notes, signed and executed in such form as may be prescribed in such resolution. Money may be borrowed in anticipation of ad valorem taxes under the provisions of this section, regardless of whether or not such borrowing shall create an indebtedness in excess of statutory limitations.

(4) Money may likewise be borrowed by the governing authorities of any municipality, as herein provided, for the purpose of paying current interest maturities on any bonded indebtedness of such municipality in anticipation of the collection of taxes for the retirement of such bonded indebtedness and the payment of any interest thereon.

(5) No governing authorities of a municipality shall borrow money or incur indebtedness as prescribed in this section after March 1, 2014.

SOURCES: Laws, 2009, ch. 485, § 1; Laws, 2010, ch. 322, § 1; Laws, 2011, ch. 321, § 1, eff from and after passage (approved Mar. 3, 2011.)

§ 21-33-326. Borrowing in anticipation of confirmed federal grants or loans.

(1) Any city, town or village that shall have received a binding commitment from the United States of America, or any agency thereof, or the State of Mississippi, or any agency thereof, for a grant or loan may borrow money in anticipation of receipt of funds from such confirmed grant or loan unless prohibited by federal law or by the terms of the agreement concerning such grant or loan and may assign and pledge as security for such interim financing the proceeds of any such grant or loan. The governing authority of the municipality may borrow such money, as hereinbefore provided, from any available fund in the municipal treasury, or from any other source, and such loan shall be repaid in the manner herein provided.

(2) Such interim financing shall be upon such terms and conditions as may be agreed upon by the issuing entity and the party advancing such interim funds or the purchaser of the obligations evidencing such indebtedness; provided, however, that the principal on any such loan shall be repaid within a reasonable time after receipt of funds from the United States of America, or from the State of Mississippi, or any agency thereof, the anticipation of which gave rise to said interim financing, and provided that the interest rate on such interim financing shall not exceed that allowed in Section 75-17-107, Mississippi Code of 1972.

(3) In borrowing money under the provisions hereof, it shall not be necessary to publish notice of intention so to do or to secure the consent of the qualified electors, either by election or otherwise. Such borrowing may be authorized by resolution of the governing authority of the issuing entity and may be evidenced by a negotiable note or notes in such form as may be prescribed in such resolution. The indebtedness incurred under this section shall not be considered when computing any limitation of indebtedness of the issuing entity established by law.

(4) Such borrowing, whether or not evidenced by a negotiable note or notes, may be placed or sold at public or private sales for such price and in such manner and from time to time as may be determined by the issuing entity, and the issuing entity may pay all expenses, premiums and commissions which its governing body may deem necessary or advantageous in connection with the issuance thereof.

(5) Such borrowing shall be limited to the sum of: (a) the amount of the confirmed grant or loan; (b) the amount of interest payable on such interim financing; and (c) the reasonable cost of incurring such indebtedness or issuing the note or notes evidencing such indebtedness. All moneys borrowed under the authority of this section shall be secured by and repaid from the grant or

loan proceeds, earnings on the investment of the grant or loan proceeds and the proceeds of the interim financing, and from any other proceeds, revenues or earnings received by the issuing entity in connection with such grant or loan or with the interim financing, and may be further secured by and repaid from available revenues of a municipally owned utility.

(6) In the event grant or loan proceeds pledged to the repayment of the interim financing have not been received in time to pay at maturity all or a portion of the principal of and interest on the indebtedness incurred pursuant to this section, the issuing entity may borrow additional moneys pursuant to this section in anticipation of the aforesaid grant or loan proceeds in order to pay at maturity the outstanding principal and interest on the indebtedness previously incurred, provided that the indebtedness originally incurred shall be promptly repaid upon receipt of proceeds of such subsequent borrowing. The issuing entity may enter into agreements with one or more lenders obligating such lenders to provide such additional financing upon such terms and conditions as may be agreed upon by the issuing entity and the lenders.

(7) The issuing entity borrowing money under the provisions of this section may employ a fiscal adviser under the terms and conditions provided in Section 21-27-45.

(8) This section, without reference to any other statute, shall be deemed to be full and complete authority for the borrowing of such funds and the issuance of a note or notes to evidence such indebtedness, and shall be construed as an additional and alternative method therefor, and none of the present restrictions, requirements, conditions or limitations of law applicable to the issuance or sale of bonds, notes or other obligations by the issuing entity in this state shall apply to the borrowing of funds under this section, and no proceedings shall be required for the borrowing of such funds other than those provided for and required herein, and all powers necessary to be exercised in order to carry out the provisions of this section are hereby conferred; provided further, that powers herein granted shall refer only to notes issued in anticipation of confirmed grants or loans as provided hereinabove.

SOURCES: Laws, 1975, ch. 493, §§ 1, 2; Laws, 1980, ch. 473, § 1; Laws, 1982, ch. 451, § 2; Laws, 1983, ch. 541, § 14; Laws, 1985, ch. 519, § 2, eff from and after July 1, 1985.

Cross References — Similar provisions for borrowing by counties, see § 19-9-28.

Application of the provisions of this section to the Mississippi Development Bank Act, see § 31-25-27.

ATTORNEY GENERAL OPINIONS

As a general proposition, a municipality may make application for a grant for a lawful purpose. Overton, April 17, 1998, A.G. Op. #98-0190.

The statute did not apply to permit a city to borrow from its Water Department Fund and repay the fund from a federal grant being paid by Newsprint South to the city under the terms of the federal grant. Criss, October 30, 1998, A.G. Op. #98-0651.

The provision of this section giving specific authority to municipalities to borrow money in anticipation of confirmed grants would also permit the expenditure of municipal funds in anticipation of the receipt of a confirmed grant. However, the municipality would be limited in its expenditure of funds to that property which is owned or leased by the municipality. Whites, July 23, 2004, A.G. Op. 04-0264.

§ 21-33-327. Incurring of indebtedness.

No interest-bearing indebtedness shall hereafter be incurred by any municipality, except in the manner hereinabove provided, or as may otherwise be provided by law.

SOURCES: Codes, 1942, § 3598-15; Laws, 1950, ch. 493, § 15; eff from and after July 1, 1950.

Cross References — Comparable provisions for counties, see § 19-9-31.
Application of this section to the Mississippi Development Bank Act, see § 31-25-27.
Indebtedness being incurred by school district only in manner provided by law, see § 37-59-45.

RESEARCH REFERENCES

ALR. Presumptions and burden of proof as to violation of or compliance with public debt limitation. 16 A.L.R.2d 515.

§ 21-33-329. Application of article.

This article shall be applicable to all municipalities of this state, whether operating under the code charter, the commission form of government, a special charter, or any other form of government, and regardless of whether or not the provisions of any special charter shall contain conflicting or contrary provisions.

SOURCES: Codes, 1942, § 3598-16; Laws, 1950, ch. 493, § 16, eff from and after July 1, 1950.

Cross References — Application of this section to the Mississippi Development Bank Act, see § 31-25-27.

ATTORNEY GENERAL OPINIONS

Express statutory provisions limiting the amount of bond issues and making the limitation applicable to all municipalities contained in the general statute supersede special charter provisions regarding the issuance of bonds. Gaylor, Dec. 15, 2006, A.G. Op. 06-0631.

ARTICLE 7.

MUNICIPAL REVOLVING FUND.

SEC.
21-33-401. Municipal revolving fund.

§ 21-33-401. Municipal revolving fund.

(1) There is created in the State Treasury a special fund designated as the "Municipal Revolving Fund."

(2) The Municipal Revolving Fund shall not be considered as a surplus or available funds when adopting a balanced budget as required by law. The State Treasurer shall invest all sums in the Municipal Revolving Fund not needed for the purposes provided for in this section in certificates of deposit, repurchase agreements and other securities as authorized in Section 27-105-33(d) or 7-9-103, as the State Treasurer may determine to yield the highest market rate available. Interest earned on this fund shall be deposited by the State Treasurer into the State General Fund.

(3) The Municipal Revolving Fund shall be distributed annually, during the month of October, to all municipalities on a population basis, using the latest federal census in computations, taking into consideration the entire population of each municipality in the state, and taking into consideration municipalities that have been incorporated since the last federal census, or will be incorporated before the next federal census, in which case the population shall be the official count used in procuring the charter of incorporation, and also taking into consideration any county seat that is not an incorporated municipality as though the county seat were an incorporated municipality. In making distribution to an unincorporated county seat, however, the funds computed to be due to the county seat shall be paid to the county treasury in which the county seat is located.

Funds made available to municipalities under the provisions of this section may be used for any lawful municipal purpose, except that where funds are made available by reason of the location of an unincorporated county seat in any county, the board of supervisors in that county shall use the funds for road, bridge and street construction or maintenance.

(4) Unexpended funds in the Municipal Revolving Fund at the end of a fiscal year shall not lapse into the State General Fund but shall remain in the fund for use under this section; provided, however, in fiscal year 2009 the provisions of this subsection shall not be applicable until the Working Cash-Stabilization Fund, created in Section 27-103-203, balance has reached a level of funding that is seven and one-half percent (7-½%) of the General Fund appropriations for such fiscal year.

SOURCES: Codes, 1942, § 3742-51; Laws, 1958, ch. 528, §§ 1-4; Laws, 1970, ch. 497, § 1; Laws, 1984, ch. 488, § 165; Laws, 2008, ch. 455, § 4, eff from and after July 1, 2008.

Editor's Note — Section 7-7-2, as added by Laws of 1984, chapter 488, § 90, and amended by Laws of 1985, chapter 455, § 14, Laws of 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts", "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of

Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Auditor of public accounts, now called the Executive Director of the Department of Finance and Administration, see §§ 7-7-1 et seq.

Duties of state treasurer generally, see § 7-9-9.

Joint legislative budget committee and legislative budget office, generally, see §§ 27-103-101 et seq.

State fiscal management board, now called the Department of Finance and Administration, see §§ 27-104-1 et seq.

ARTICLE 9.

LOCAL IMPROVEMENT TAXING DISTRICTS.

§§ 21-33-501 through 21-33-525. Repealed.

Repealed by operation of law on July 1, 2001, by Laws 1998, ch. 502, § 14.

§ 21-33-501. [Laws, 1993, ch. 573, § 1; Laws, 2000, ch. 459, § 1, eff from and after February 12, 2001(the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section.)]

§ 21-33-503. [Laws, 1993, ch. 573, § 2; Laws, 2000, ch. 459, § 2, eff from and after February 12, 2001(the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).]

§ 21-33-505. [Laws, 1993, ch. 573, § 3; Laws, 2000, ch. 459, § 3, eff from and after February 12, 2001(the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).]

§ 21-33-507. [Laws, 1993, ch. 573, § 4; Laws, 2000, ch. 459, § 4, eff from and after February 12, 2001(the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).]

§ 21-33-509. [Laws, 1993, ch. 573, § 5; Laws, 2000, ch. 459, § 5, eff from and after February 12, 2001(the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).]

§ 21-33-511. [Laws, 1993, ch. 573, § 6; Laws, 2000, ch. 459, § 6, eff from and after February 12, 2001 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).]

§ 21-33-513. [Laws, 1993, ch. 573, § 7; Laws, 2000, ch. 459, § 7, eff from and after February 12, 2001 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).]

§ 21-33-515. [Laws, 1993, ch. 573, § 8; reenacted without change, 1998, ch. 502, § 8; brought forward without change, Laws, 2000, ch. 459, § 10, eff from and after February 12, 2001 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).]

§ 21-33-517. [Laws, 1993, ch. 573, § 9; Laws, 2000, ch. 459, § 8, eff from and after February 12, 2001 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).]

§ 21-33-519. [Laws, 1993, ch. 573, § 10; Laws, 2000, ch. 459, § 9, eff from and after February 12, 2001 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).]

§ 21-33-521. [Laws, 1993, ch. 573, § 11; reenacted without change, 1998, ch. 502, § 11; brought forward without change, Laws, 2000, ch. 459, § 11, eff from and after February 12, 2001 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).]

§ 21-33-523. [Laws, 1993, ch. 573, § 12; reenacted without change, 1998, ch. 502, § 12; brought forward without change, Laws, 2000, ch. 459, § 12, eff from and after February 12, 2001 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).]

§ 21-33-525. [Laws, 1993, ch. 573, § 13; reenacted without change, 1998, ch. 502, § 13; brought forward without change, Laws, 2000, ch. 459, § 13, eff from and after February 12, 2001 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).]

Editor's Note — Former § 21-33-501 was entitled "Definitions."

Former § 21-33-503 was entitled "Establishment of special local improvement taxing districts; levy of annual special tax; notice and hearing; amendments to taxing district resolutions."

Former § 21-33-505 was entitled "Powers and duties of municipality within special taxing district; powers and duties of homeowners' association representing property area within special taxing district; dissolution of district."

Former § 21-33-507 was entitled "Use of proceeds from special tax levied on real estate."

Former § 21-33-509 was entitled "Rate of tax levied; agreements limiting or restricting issuance of bonds by municipality."

Former § 21-33-511 was entitled "Issuance and execution of bonds."

Former § 21-33-513 was entitled "Payment of bonds; source of funds."

Former § 21-33-515 was entitled "Content of resolution regarding issuance of bonds; bond holders' lien on revenue pledged to pay bonds; state not to interfere with special taxes."

Former § 21-33-517 was entitled "Delegation of authority to urban renewal agency or redevelopment authority."

Former § 21-33-519 was entitled "Acceptance and expenditure of contributions."

Former § 21-33-521 was entitled "Bonds considered legal investments."

Former § 21-33-523 was entitled "Provisions of article governing bonds independent of other laws."

Former § 21-33-525 was entitled "Bonds and income therefrom to be tax exempt."

CHAPTER 35

Municipal Budget

Sec.

21-35-1. Citation of chapter.
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§ 21-35-1. Citation of chapter.

This chapter may be cited as the "Municipal Budget Law."

SOURCES: Codes, 1942, § 9121-01; Laws, 1950, ch. 497, § 1, eff from and after August 31, 1950.

Cross References — County and municipal appropriations to planning and development districts, see § 17-19-1.

Provisions of county budget law, see §§ 19-11-1 et seq.

County or municipal appropriations for railroad rehabilitation or improvement, see § 57-43-9.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 555.

CJS. 64 C.J.S., Municipal Corporations §§ 2096-2099.

§ 21-35-3. Fiscal year.

Each municipality of the State of Mississippi shall operate on a fiscal year basis, beginning October first and ending September thirtieth of each year.

SOURCES: Codes, 1942, § 9121-02; Laws, 1950, ch. 497, § 2, eff from and after August 31, 1950.

Cross References — Fiscal year of county being identical, see § 19-11-5.

§ 21-35-5. Preparation and publication of annual budget; public hearing.

The governing authorities of each municipality of the State of Mississippi shall, not later than September 15 each year, prepare a complete budget of the municipal revenues, expenses and working cash balances estimated for the next fiscal year, and shall prepare a statement showing the aggregate revenues collected during the current year in said municipality for municipal purposes. Such statement shall show every source of revenue along with the amount derived from each source. Said budget of any municipality of one thousand five hundred (1,500) inhabitants or more, according to the last preceding federal census, with said statement of revenue and expenses, shall be published at least one (1) time during September of said year in a newspaper published in such municipality or, if no newspaper be published in such municipality, in any newspaper published in the county wherein the municipality is located. In municipalities of less than one thousand five hundred (1,500) inhabitants, according to the last preceding federal census, as many as three (3) prepared statements of said budget shall be posted in three (3) public places in said municipalities.

Prior to the adoption of a budget pursuant to this section, the governing authority of each municipality shall hold at least one (1) public hearing to provide the general public with an opportunity to comment on the taxing and spending plan incorporated in the proposed budget. The public hearing shall be held at least one (1) week prior to the adoption of the budget with advance notice and held outside normal working hours. The advance notice shall include an announcement published or posted in the same manner as required for the final adopted budget.

SOURCES: Codes, 1930, § 3970; 1942, § 9121-03; Laws, 1926, ch. 217; Laws, 1940, ch. 282; Laws, 1950, ch. 497, § 3; Laws, 1958, ch. 549, § 4; Laws, 1983, ch. 470; Laws, 1985, ch. 519, § 3, eff from and after July 1, 1985.

Cross References — Preparation and publication of county's annual budget, see § 19-11-7.

Methods of publishing notice, see § 21-41-51.

Submission of budget requests to legislative budget office, see § 27-103-127.

JUDICIAL DECISIONS

1. In general.

In an action by a city against a commissioner, who was also city clerk, which was instituted in the chancery court and transferred to the circuit court, charging that the commissioner and clerk had during a three-month period, in the last year of his term of office, expended from city funds contract obligations in excess of one fourth of the various items of the city budget for that year, and had failed to keep proper city records and books, where a copy of the budget was exhibited with the bill and declaration, a copy of the city audit was available to the defendant, and the chancery court, to which the case was remanded, would have ample power to require any needed further clarification, the circuit court did not err in overruling defendant's motion for a bill of particulars. City of Biloxi v. Creel, 232 Miss. 284, 98 So. 2d 774 (1957).

Where a determinative vote on a resolution, directing the dismissal of the city's suit to recover losses resulting from budget excesses, illegal expenditures and failure to keep proper records by officials of the city, was cast by one of the officials sued, the resolution was void, not only as to the voting city official but as to the other defendant as well. Friedhof v. City of Biloxi, 232 Miss. 20, 97 So. 2d 742 (1957).

ATTORNEY GENERAL OPINIONS

As between qualified newspapers, a newspaper with a known office of publication within the municipality must be selected to publish the legal notices of that municipality. Edens, July 23, 1999, A.G. Op. #99-0289.

RESEARCH REFERENCES

Am Jur. 18A Am. Jur. Pl & Pr Forms (Rev), Notice, Form 1 (notice, general form).

18A Am. Jur. Pl & Pr Forms (Rev), Notice, Forms 24, 25 (affidavit of notice by posting or publication).

1 Am. Jur. Proof of Facts 297, Advertisements.

§ 21-35-7. Form of budget.

Said budget of expenses and revenue shall be prepared in such form as may be necessary, upon forms to be prescribed by the state auditor, as the head of the state department of audit, or the director thereof, appointed by him, as designated and defined in Title 7, Chapter 7, of the Mississippi Code of 1972, or any office or officers hereafter designated to replace or perform the duties imposed by said chapter, to show all estimates for the different municipal purposes of expenditure and source of revenue, respectively.

SOURCES: Codes, 1930, § 3971; 1942, § 9121-04; Laws, 1922, ch. 225; Laws, 1950, ch. 497, § 4, eff from and after August 31, 1950.

Editor's Note — Section 7-7-2, as added by Laws of 1984, chapter 488, § 90, and amended by Laws of 1985, chapter 455, § 14, Laws of 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts", "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts", "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Comparable provision for counties, see § 19-11-9.

Principles governing expenditure of funds budgeted, see § 21-35-15.

Personal liability of official authorizing expenditures in excess of budget estimates, see § 21-35-17.

Emergency expenditures requiring budget revision, see § 21-35-19.

Conditions under which budget may be, or must be revised, see § 21-35-25.

Duties of state auditor, now the Executive Director of the Department of Finance and Administration, in connection with municipal budgets, see § 21-35-29.

Annual audit of municipalities' books under formula prescribed by state auditor, now the Executive Director of the Department of Finance and Administration, see § 21-35-31.

§ 21-35-9. Contents of final budget; approval thereof.

The budget as finally determined, in addition to setting out separately each item for which any appropriation of expenditures is authorized to be expended and the fund out of which the same is to be paid, shall set out the total amount appropriated and authorized to be expended from each fund, the cash balance in the fund at the close of the present preceding fiscal year, the working cash balance necessary for the next fiscal year, the estimated amount, if any, which will accrue to the fund from sources other than taxation for the current fiscal year, and the amount necessary to be raised for each fund by tax levy during the current fiscal year. The governing authorities of the municipality shall then, by resolution, approve and adopt the budget as finally determined, and enter the same at length and in detail in their official minutes.

The board of governing authorities shall not authorize any expenditure of money, and the city clerk shall not issue any warrant for same, except for bonds, notes, debts and interest, after October 1 in each year, unless and until the budget be finally approved, and such approval entered upon their minutes.

SOURCES: Codes, 1942, §§ 9121-07, 9121-18; Laws, 1950, ch. 497, §§ 7, 18; Laws, 1981, ch. 377, § 1; Laws, 1985, ch. 519, § 4, eff from and after July 1, 1985.

Cross References — Right of appeal to the circuit court in all matters except bond issuance or sale, see § 11-51-75.

Contents of county's final budget, see § 19-11-11.

Penalties, see § 21-35-33.

§ 21-35-11. Records of municipal funds.

The clerk of the municipality shall open and keep a regular set of records, as prescribed by the State Auditor, as the head of the State Department of Audit, or the director thereof, appointed by him, as designated and defined in Title 7, Chapter 7, of the Mississippi Code of 1972, or any office or officers hereafter designated to replace or perform the duties imposed by said chapter, of each and every fund of the municipality, subject always to inspection within office hours by any citizen desiring to inspect the same. Said records shall contain accounts, under headings, corresponding with the several headings of the budget, so that the expenditures under each head may be at once known, and the purpose for which expended, and said records shall show the source of all monies received and paid into each fund of the municipality. Said records shall be paid for out of the general municipal fund, upon the order of the proper municipal authorities.

For failure to perform any duty herein required, said clerk shall be subject to suit on his bond for any damage which the municipality may sustain by reason of such failure. Such suit, or suits, shall be brought by the city attorney or by any attorney designated and empowered to do so by the proper governing authorities of such municipality.

SOURCES: Codes, 1930, § 3972; 1942, §§ 9121-05, 9121-16; Laws, 1922, ch. 225; Laws, 1950, ch. 497, §§ 5, 16; Laws, 1995, ch. 447, § 12, eff from and after July 1, 1995.

Editor's Note — Section 7-7-2, as added by Laws of 1984, chapter 488, § 90, and amended by Laws of 1985, chapter 455, § 14, Laws of 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts", "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts", "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Right of appeal to the circuit court in all matters except bond issuance or sale, see § 11-51-75.

Comparable provisions for keeping county books of accounts, see § 19-11-13.

Record and payment of claims in all municipalities, see § 21-39-5.

Claims docket, disposition and issuance of warrants, see §§ 21-39-7 et seq.

JUDICIAL DECISIONS

1. In general.

In an action by a city against a commissioner, who was also city clerk, which was instituted in the chancery court and transferred to the circuit court, charging that the commissioner and clerk had during a three months' period, in the last year of his term of office, expended from city funds contract obligations in excess of one fourth of the various items of the city budget for that year, and had failed to keep proper city records and books, where a copy of the budget was exhibited with the bill and declaration, a copy of the city audit was available to the defendant, and the chancery court, to which the case was remanded, would have ample power to require any needed further clarification, the circuit court did not err in overruling defendant's motion for a bill of particulars. City of Biloxi v. Creel, 232 Miss. 284, 98 So. 2d 774 (1957).

Where a determinative vote on a resolution, directing the dismissal of the city's suit to recover losses resulting from budget excesses, illegal expenditures and failure to keep proper records by officials of the city, was cast by one of the officials sued, the resolution was void, not only as to the voting city official but as to the other defendant as well. Friedhof v. City of Biloxi, 232 Miss. 20, 97 So. 2d 742 (1957).

ATTORNEY GENERAL OPINIONS

The governing authorities of a town may, in their discretion, establish procedures for collection of mail to ensure that safeguards exist which will assist the municipal clerk in the carrying out of her functions; the board may also authorize who can and who cannot pick up and open the mail. Freeman and Daily, Mar. 15, 2002, A.G. Op. #02-0078.

RESEARCH REFERENCES

ALR. Payroll records of individual government employees as subject to disclosure to public. 100 A.L.R.3d 699.

§ 21-35-13. Monthly report of clerk.

At the regular meeting in each month, the city clerk shall submit to the governing authorities of the municipality a report showing the expenditures and liabilities incurred against each separate budget appropriation item during the preceding calendar month, and like information for the whole of the fiscal year to the first day of the month in which such report is made, together with the unexpended balance of each appropriation item and the unencumbered balance. He shall also set forth the receipts from property taxes and, in detail, the receipts from other taxes and all other sources of each fund for the same period.

SOURCES: Codes, 1942, § 9121-12; Laws, 1950, ch. 497, § 12, eff from and after August 31, 1950.

Cross References — Comparable provision for board of supervisors' clerk, see § 19-11-23.

Duties of clerk, see §§ 21-15-17, 21-15-19, 21-23-11, and 21-39-7.

§ 21-35-15. Expenditure of funds.

The governing authorities shall at all times keep within the sums named in their said budget and within the annual revenue, always seeking to lessen expenditures instead of exceeding revenue and budget estimates. There shall not be added to the amount to be appropriated and authorized to be expended for any item, or to the total amount appropriated and authorized to be expended from any fund any amount or percentage whatever because of any anticipated loss of revenue by reason of the nonpayment of taxes levied for the current fiscal year. The amount appropriated and authorized to be expended for any item contained in such budget, except for capital outlay, election expenses, and payment of emergency warrants and interest thereon, must not exceed the amount actually estimated for such item, and the total amount appropriated and authorized to be expended from any fund, except for capital outlay, election expenses and payment of emergency warrants and interest thereon, shall not exceed the total amount actually estimated for all purposes. The total expenditures authorized to be made from any fund shall not exceed the aggregate cash balance, in such fund at the close of the fiscal year immediately preceding, plus the amount of estimated revenues to accrue to such fund, as determined and fixed in the manner provided by this chapter, and the amount which may be raised for such fund by a lawful tax levy during the current fiscal year. Nothing herein contained shall be construed to prevent any municipality from making adequate provision at any time for the payment of principal of and interest on its outstanding bonded indebtedness.

SOURCES: Codes, 1942, § 9121-06; Laws, 1950, ch. 497, § 6, eff from and after August 31, 1950.

Cross References — Expenditure of county funds not exceeding revenue and budget estimates, see § 19-11-15.

ATTORNEY GENERAL OPINIONS

The ultimate responsibility for any violations of the provisions of Section 21-35-1 et seq. rests with either the members of the governing authority authorizing unlawful expenditures in excess of budgeted amounts or with the clerk (or the appropriate individual of the fiscal or finance department established pursuant to Section 21-17-15) in issuing warrants in excess of budgeted amounts, or with all such officers or employees. Crisler, Mar. 24, 2006, A.G. Op. 06-0033.

RESEARCH REFERENCES

Am Jur. 23 Am. Jur. Pl & Pr Forms (Rev), Taxpayers' Actions, Forms 1 (complaint, petition, or declaration to enjoin illegal expenditure of public funds).

§ 21-35-17. Budget estimates not to be exceeded; liability therefor.

Expenditures made, liabilities incurred, or warrants issued in excess of any of the budget detailed appropriations as originally and finally determined, or as thereafter revised by transfer as provided by this chapter, shall not be a liability of the municipality, but the official making or incurring such expenditure or issuing such warrant shall be liable therefor personally and upon his official bond. The governing authorities shall not approve any claim and the city clerk shall not issue any warrant for any expenditure in excess of said detailed budget appropriations as finally adopted, or as revised under the provisions of this chapter, except upon an order of a court of competent jurisdiction or for an emergency, as provided in this chapter. Any one or more of the governing authorities, or clerk, approving any claim or issuing any warrant in excess of any such budget appropriation, except as above provided, shall forfeit to the municipality twice the amount of such claim or warrant, which shall be recovered in an action against such member, or members, of the governing authorities, or clerk, or all of them, and the several sureties on their official bonds, and it shall be the duty of the governing authorities of such municipality, or the state auditor, as the head of the state department of audit, or the director thereof, appointed by him, or any taxpayer of such municipality, to bring an action therefor through the city attorney, or any attorney designated and empowered so to do by a court of competent jurisdiction.

SOURCES: Codes, 1942, § 9121-08; Laws, 1950, ch. 497, § 8, eff from and after August 31, 1950.

Editor's Note — Section 7-7-2, as added by Laws of 1984, chapter 488, § 90, and amended by Laws of 1985, chapter 455, § 14, Laws of 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts", "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts", "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Comparable provisions for counties, see § 19-11-17.

ATTORNEY GENERAL OPINIONS

The ultimate responsibility for any violations of the provisions of Section 21-35-1 et seq. rests with either the members of the governing authority authorizing unlawful expenditures in excess of budgeted amounts or with the clerk (or the appropriate individual of the fiscal or finance department established pursuant to Section 21-17-15) in issuing warrants in excess of budgeted amounts, or with all such officers or employees. Crisler, Mar. 24, 2006, A.G. Op. 06-0033.

RESEARCH REFERENCES

Am Jur. 23 Am. Jur. Pl & Pr Forms (Rev), Taxpayers' Actions, Form 31 (Complaint, petition, or declaration to enjoin payment of drafts of municipal corporation exceeding authorized limit).

§ 21-35-19. Emergency expenditures.

Upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, epidemic, riot or insurrection, or caused by any inherent defect due to defective construction, or when the immediate preservation of order or of public health is necessary, or when the restoration of a condition of usefulness of any public building which has been destroyed by accident appears advisable or in order to settle lawful claims for personal injuries or property damage where such municipality is liable therefor under law, exclusive of claims arising from the operation of any public utility owned by the municipality, or in order to meet mandatory expenditures required by law, the board of governing authorities may, upon adoption by unanimous vote of all members present, at any meeting, of a resolution stating the facts constituting the emergency and entering the same upon its minutes, make the expenditures, borrow money, or incur the liabilities necessary to meet such emergency, without further notice or hearing, and may revise the budget accordingly.

SOURCES: Codes, 1942, 9121-09; Laws, 1950, ch. 497, § 9, eff from and after August 31, 1950.

Cross References — Emergency expenditures by counties, see § 19-11-21.

Emergency expenditures being made by issuance of emergency warrants, see § 21-35-21.

Limitations on expenditures for the last year of governing authorities' term, see § 21-35-27.

ATTORNEY GENERAL OPINIONS

The governing authorities of a town, if they made the factual determination that an emergency existed, could enter into contracts with the United States Department of Agriculture or other federal agencies to obtain grants or to sell bonds as authorized by the results of a bond election, contracts with contractors for the construction of the sewer system, and a contract with a city as authorized by a Senate Bill for the purpose of constructing and maintaining a sewer system pursuant to Section 21-35-19, even if the town exceeded the budget limitations imposed by Section 21-35-27. Hatcher, Apr. 23, 2001, A.G. Op. #01-0247.

This section and § 21-35-21 provide authority for municipal governing authorities, in emergency situations, to borrow funds. Whether an emergency exists to satisfy the requirements of these statutes is a question of fact to be resolved by the municipal governing authorities. Paying salaries of police and public works employees may be found necessary to preserve order and/or public health. Marshall, Aug. 27, 2004, A.G. Op. 04-0428.

§ 21-35-21. Emergency warrants.

All emergency expenditures made under the provisions of Section 21-35-19 shall be made by the issuance of emergency warrants drawn against the special fund, or funds, properly chargeable with such expenditures. The municipal depository is authorized and directed to pay such emergency warrants with any money in such fund, or funds, available for such purpose. If at any time there shall not be sufficient money available in such fund, or funds, from usual sources or from grants, transfers or donations, to pay such warrants, then the governing authorities of the municipality are hereby authorized to borrow the required amount, not to exceed the authorized emergency expenditures, in the manner now provided by law, and shall execute the notes of the municipality for the amount borrowed.

SOURCES: Codes, 1942, § 9121-10; Laws, 1950, ch. 497, § 10, eff from and after August 31, 1950.

ATTORNEY GENERAL OPINIONS

Section 21-35-19 and this section provide authority for municipal governing authorities, in emergency situations, to borrow funds. Whether an emergency exists to satisfy the requirements of these statutes is a question of fact to be resolved by the municipal governing authorities. Paying salaries of police and public works employees may be found necessary to preserve order and/or public health. Marshall, Aug. 27, 2004, A.G. Op. 04-0428.

§ 21-35-22. Municipal Reserve Fund.

Any municipality in the state may establish a special fund to be known as a municipal reserve fund. Funds specifically designated by the governing authorities of a municipality for deposit in the municipality's reserve fund shall be deposited in a separate municipal account established for this purpose. The interest earned in a municipality's reserve fund shall be credited to the municipality's reserve fund. Legal expenditures shall be made from the fund upon requisition of the governing authorities of a municipality, spread on the minutes and signed by the mayor of the municipality, the secretary of the mayor, or the president of the city council or board of aldermen. A municipality may deposit funds as needed into its reserve fund.

SOURCES: Laws, 1999, ch. 352, § 1, eff from and after July 1, 1999.

ATTORNEY GENERAL OPINIONS

With regard to the privatization of maintenance and operation of municipal water and sewer systems, the governing authorities do not have authority to establish a reserve fund to pay for materials used by the contractor for maintenance and repairs to the systems and other expenditures as may be mutually agreed between the parties; the governing authorities may establish a reserve fund for expenses of the water system or other expenses, but only the governing authorities are authorized to make expenditures from the fund. Snyder, Nov. 27, 2000, A.G. Op. #2000-0673.

§ 21-35-23. When appropriations made under budget to lapse.

All appropriations, other than appropriations for uncompleted improvements in progress of construction, shall lapse at the end of the fiscal year. The appropriation accounts shall remain open for a period of thirty days thereafter for the payment of claims incurred against such appropriations prior to the close of the fiscal year and remaining unpaid. After such period shall have expired, all appropriations, except as hereinbefore provided regarding uncompleted improvements, shall become null and void, and any lawful claim presented thereafter against any such appropriation shall be provided for in the current budget.

SOURCES: Codes, 1942, § 9121-11; Laws, 1950, ch. 497, § 11, eff from and after August 31, 1950.

Cross References — County appropriations lapsing at end of fiscal year, see § 19-11-25.

Municipal authorities appropriating funds for expenses, see § 21-17-7.

§ 21-35-25. Revision of municipal budget.

Notwithstanding any provision in this chapter to the contrary, the budget of any municipality may be revised as provided in this section and under the conditions herein stated, and when a deficit is indicated the budget shall be revised.

The governing authorities of any municipality are authorized to revise the budget for expenses of such municipality at any one (1) regular meeting of said governing authorities held not later than August of the first year in which such governing authorities enter upon the discharge of their duties, provided there be funds in the treasury of the municipality, or coming into the treasury during the fiscal year, not appropriated by the budget of the outgoing board of governing authorities, and there is a deficit in any one (1) or more items provided for in the budget of the preceding board. This section shall not, however, validate or invalidate any contracts made, executed or entered into by the governing authorities of the preceding term.

If it appears at any time during the current fiscal year, but not later than the regular July meeting of the board of governing authorities, that collections of anticipated revenues from taxes or other sources will be less than the amount estimated, and a deficit is thereby indicated for any fund, or funds, the governing authorities shall, at a regular meeting, revise and reduce the budget appropriations for such funds as is anticipated will have a deficit, so as to conform to the lowered indicated revenue, including revenue from taxes and all other sources.

If it affirmatively appears at any time during the current fiscal year that actual collections and anticipated revenues from taxes or other sources, including grants or donations, will exceed the estimates, then the governing authorities may revise and increase the budget appropriation of such fund, or funds, affected by such increase in revenue, but no such transfer shall be made from fund to fund, or from item to item, which will result in the expenditure of any money for a purpose different from that for which the tax was levied. The budget, as so revised, shall be spread in detail upon the minutes of said board of governing authorities. However, no such increase shall in any event be construed to authorize expenditures or to incur obligations which will result in a deficit in any fund, or funds.

If the increase in revenue over the estimates is from other than regular sources, including grants and donations, such excess over the estimate may be expended for improvements and new construction, including buildings, additions to buildings, streets, and street improvements.

If it affirmatively appears at any time during the current fiscal year that there is in any fund or account any sum remaining unexpended and not needed or expected to be needed for the purpose or purposes for which appropriated in said budget, then the governing authorities may, in their discretion, transfer such sum or any part thereof to any other fund or funds or account or accounts where needed, by order to such effect entered upon their minutes. This shall not, however, authorize the expenditure of any funds for any purpose other than that for which the levy producing such funds was made.

Any amendments made pursuant to this section to an originally adopted budget which exceed ten percent (10%) of the total amount appropriated or authorized to be expended in a particular department fund shall be published or posted within two (2) weeks of the action in a newspaper in the same manner as the final adopted budget. Separate amendments to an originally adopted budget during one fiscal year which affect a particular department fund shall be considered as one (1) amendment in determining whether the ten percent (10%) threshold requiring publication or posting has been reached. This publication or posted notice shall contain a description of the amendment, the amount of money and funds affected, and a detailed statement explaining the need and purpose of the amendment. The vote of each member of the municipality's governing authority on each amendment shall be included in the publication or posted notice.

SOURCES: Codes, 1942, § 9121-14; Laws, 1950, ch. 497, § 14; Laws, 1985, ch. 519, § 5, eff from and after July 1, 1985.

Cross References — When county budget revised, see § 19-11-19.

ATTORNEY GENERAL OPINIONS

A county board of supervisors is not authorized to modify or amend the millage for the fiscal year once that has been duly and properly established by the governing authority. Hatcher, Dec. 28, 1999, A.G. Op. #99-0660.

A mayor does not have authority to transfer funds from one account, such as the park account, to the general funds or another account without prior approval by the board of aldermen. Willis, Mar. 8, 2002, A.G. Op. 02-0055.

If a municipality reduces funding to a park commission due to the increase in the value of a mill, the municipality may amend its budget by following the provisions of Section 21-35-25. Bordis, Jan. 31, 2003, A.G. Op. #03-0020.

§ 21-35-27. Expenditures for last year of term are limited.

No board of governing authorities of any municipality shall expend from, or contract an obligation, against the budget made and published by it during the last year of the term of office of such governing authorities, between the first day of April and the first day of the following July that is not on a weekend, a sum exceeding one-fourth (¼) of any item of the budget made and published by it, except in cases of emergency provided for in Section 21-35-19. The city clerk of any municipality is hereby prohibited from issuing any warrant contrary to the provisions of this section.

The provisions of this section shall not apply to a contract, lease or lease-purchase contract entered into pursuant to Section 31-7-13 or to seasonal purchases or expenditures.

SOURCES: Codes, 1942, § 9121-15; Laws, 1950, ch. 497, § 15; Laws, 1984 ch. 480, § 2; Laws, 2000, ch. 428, § 2; Laws, 2001, ch. 597, § 1; Laws, 2006, ch. 558, § 1; Laws, 2010, ch. 319, § 6, eff July 22, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated July 22, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 319, § 6.

Cross References — Expenditures being limited during last year of board of supervisors' term, see § 19-11-27.

Inapplicability of the prohibitions and restrictions set forth in this section to a contract, lease, or lease-purchase agreement entered pursuant to the requirements of Sections 31-7-1 et seq., dealing with public purchases, see § 31-7-13.

JUDICIAL DECISIONS

1. In general.

In an action by a city against a commissioner, who was also city clerk, which was instituted in the chancery court and transferred to the circuit court, charging that the commissioner and clerk had during a three-month period, in the last year of his term of office, expended from city funds contract obligations in excess of one fourth of the various items of the city budget for that year, and had failed to keep proper city records and books, where a copy of the budget was exhibited with the bill and declaration, a copy of the city audit was available to the defendant, and the chancery court, to which the case was remanded, would have ample power to require any needed further clarification, the circuit court did not err in overruling defendant's motion for a bill of particulars. City of Biloxi v. Creel, 232 Miss. 284, 98 So. 2d 774 (1957).

Where a determinative vote on a resolution, directing the dismissal of the city's suit to recover losses resulting from budget excesses, illegal expenditures and failure to keep proper records by officials of the city, was cast by one of the officials sued, the resolution was void, not only as to the voting city official but as to the other defendant as well. Friedhof v. City of Biloxi, 232 Miss. 20, 97 So. 2d 742 (1957).

ATTORNEY GENERAL OPINIONS

City clerk of any municipality is prohibited from issuing any warrant contrary to provisions of Miss. Code Section 21-35-27. Rudman, Mar. 31, 1993, A.G. Op. #93-0184.

The governing authorities of a town, if they made the factual determination that an emergency existed, could enter into contracts with the United States Department of Agriculture or other federal agencies to obtain grants or to sell bonds as authorized by the results of a bond election, contracts with contractors for the construction of the sewer system, and a contract with a city as authorized by a Senate Bill for the purpose of constructing and maintaining a sewer system pursuant to Section 21-35-19, even if the town exceeded the budget limitations imposed by Section 21-35-27. Hatcher, Apr. 23, 2001, A.G. Op. #01-0247.

§ 21-35-29. Duties of state auditor.

The state auditor, as the head of the state department of audit, or the director thereof, appointed by him, as designated and defined in Title 7, Chapter 7 of the Mississippi Code of 1972, or any office or officers hereafter designated to replace or perform the duties imposed by said chapter, is hereby empowered, and it is made his duty, to make such rules, regulations and classifications, and prescribe such forms as may be necessary to carry out the provisions of this chapter, to define what expenditures shall be chargeable to each budget account, and to establish such accounting and cost systems as may be necessary to provide accurate budget information.

SOURCES: Codes, 1942, § 9121-13; Laws, 1950, ch. 497, § 13, eff from and after August 31, 1950.

Editor's Note — Section 7-7-2, as added by Laws of 1984, chapter 488, § 90, and amended by Laws of 1985, chapter 455, § 14, Laws of 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts", "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts", "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Power and duties of department of audit, now the Department of Finance and Administration, see § 7-7-211.

§ 21-35-31. Annual audits or reports required; noncompliance; authority to withhold from allocations and payments payable to municipality certain amount to pay cost of audit or report.

[For municipal fiscal years commencing before October 1, 2009, this section shall read as follows:]

The governing authorities of every municipality in the state shall have their books audited annually, prior to the close of the next succeeding fiscal year, either by a competent accountant approved by the State Auditor or by a certified public accountant, who has paid a privilege tax as such in this state, and shall pay for same out of the General Fund. No advertisement shall be necessary before entering into such contract, but same shall be entered into as a private contract. Said audit shall be made upon a uniform formula set up and promulgated by the State Auditor, as the head of the State Department of Audit, or the director thereof, appointed by him, as designated and defined in Title 7, Chapter 7, of the Mississippi Code of 1972, or any office or officers hereafter designated to replace or perform the duties imposed by said chapter. Provided, however, any municipality with a population of three thousand (3,000) or less may employ a competent accountant or auditor, approved by the State Auditor, to prepare annually a compilation report and a compliance letter, in a format prescribed by the State Auditor, in lieu of an annual audit when such audit will be a financial hardship on the municipality. Two (2) copies of said audit or compilation shall be mailed to the said State Auditor within thirty (30) days after completion of said audit. Said State Auditor shall, at the end of each fiscal year, submit to the Legislature a composite report showing any information concerning municipalities in this state that he might deem pertinent and necessary to the Legislature for use in its deliberations. A synopsis of said audit, in a format prescribed by the State Auditor, shall be published within thirty (30) days by the governing authorities of such municipalities in a newspaper published in such municipalities or, if no newspaper be published in any such municipality, in any newspaper having a general circulation published in the county wherein such municipality is located. The publication of the audit may be made as provided in Section 21-17-19, Mississippi Code of 1972. Such publication shall be made one (1) time, and the governing authorities of such municipalities shall be authorized to pay only one-half (½) of the legal rate prescribed by law for such legal publication.

[For municipal fiscal years commencing on or after October 1, 2009, this section shall read as follows:]

(1) The governing authority of every municipality in the state shall have the municipal books audited annually, before the close of the next succeeding fiscal year, in accordance with procedures and reporting requirements prescribed by the State Auditor. The municipality shall pay for the audit or report out of its general fund. No advertisement shall be necessary before entering into the contract, and it shall be entered into as a private contract. The audit or report shall be made upon a uniform formula set up and promulgated by the State Auditor, as the head of the State Department of Audit, or the director thereof, appointed by him, as designated and defined in Title 7, Chapter 7, Mississippi Code of 1972, or any office or officers hereafter designated to replace or perform the duties imposed by said chapter. Two (2) copies of the audit or report shall be mailed to the said State Auditor within thirty (30) days after completion. The State Auditor, at the end of each fiscal year, shall submit to the Legislature a composite report showing any information concerning municipalities in this state that the Auditor deems pertinent and necessary to the Legislature for use in its deliberations. A synopsis of the audit or report, in a format prescribed by the State Auditor, shall be published within thirty (30) days by the governing authority of each municipality in a newspaper published in the municipality or, if no newspaper is published in a municipality, in any newspaper having a general circulation published in the county wherein the municipality is located. The publication of the audit or report may be made as provided in Section 21-17-19. Publication shall be made one (1) time, and the governing authority of each municipality shall be authorized to pay only one-half (½) of the legal rate prescribed by law for such legal publication.

(2) It shall be the duty of the State Auditor to determine whether each municipality has complied with the requirements of subsection (1) of this section. If upon examination the State Auditor determines that a municipality has not initiated efforts to comply with the requirements of subsection (1), the State Auditor shall file a certified written notice with the clerk of the municipality notifying the governing authority of the municipality that a certificate of noncompliance will be issued to the State Tax Commission and to the Attorney General thirty (30) days immediately following the date of the filing of the notice unless within that period the municipality substantially

complies with the requirements of subsection (1). If, after thirty (30) days from the giving of the notice, the municipality, in the opinion of the State Auditor, has not substantially initiated efforts to comply with the requirements of subsection (1), the State Auditor shall issue a certificate of noncompliance to the clerk of the municipality, State Tax Commission and the Attorney General. Thereafter, the State Tax Commission shall withhold from all allocations and payments to the municipality that would otherwise be payable the amount necessary to pay one hundred fifty percent (150%) of the cost of preparing the required audit or report as contracted for by the State Auditor. The cost shall be determined by the State Auditor after receiving proposals for the audit or report required in subsection (1) of this section. The State Auditor shall notify the State Tax Commission of the amount in writing, and the State Tax Commission shall transfer that amount to the State Auditor. The State Auditor is authorized to escalate, budget and expend these funds in accordance with rules and regulations of the Department of Finance and Administration consistent with the escalation of federal funds. All remaining funds shall be retained by the State Auditor to offset the costs of administering these contracts. The State Auditor shall not unreasonably delay the issuance of a written notice of cancellation of a certificate of noncompliance but shall promptly issue a written notice of cancellation of certificate of noncompliance upon an affirmative showing by the municipality that it has come into substantial compliance.

SOURCES: Codes, 1942, § 9121-17; Laws, 1950, ch. 497, § 17; Laws, 1970, ch. 502, § 1; Laws, 1970, ch. 540, § 1; Laws, 1981, ch. 378, § 1; Laws, 1985, ch. 519, § 6; Laws, 1988, ch. 457, § 8; Laws, 1990, ch. 526, § 1; Laws, 2009, ch. 435, § 1, eff from and after July 1, 2009.

Editor's Note — Section 7-7-2, as added by Laws of 1984, chapter 488, § 90, and amended by Laws of 1985, chapter 455, § 14, Laws of 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts", "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts", "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Power and duties of department of audit, now the Department of Finance and Administration, see § 7-7-211.

ATTORNEY GENERAL OPINIONS

Miss. Code Section 21-35-31 requires governing authorities of every municipality to have books audited annually by independent accountant approved by

State Auditor or by certified public accountant, according to uniform formula set up and promulgated by State Auditor. Hewes, Apr. 7, 1993, A.G. Op. #93-0131.

City retirement funds should be included in annual city audit required by Section 21-35-31 in absence of any special provision to contrary found in any local and private legislation dealing specifically with city retirement funds. Luther, March 21, 1994, A.G. Op. #94-0042.

The term "governing authority" generally refers to any board that governs a political subdivision or instrumentality of the state; this includes boards of supervisors, district school boards, boards of aldermen or city councils, and other governing boards of commissions, districts and agencies. Bryant, May 5, 2000, A.G. Op. #2000-0185.

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

§ 21-35-33. Penalty for violation.

Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and punished as provided by law, which shall be in addition to any other penalty now or hereafter imposed by law.

SOURCES: Codes, 1942, § 9121-18; Laws, 1950, ch. 497, § 18, eff from and after August 31, 1950.

ATTORNEY GENERAL OPINIONS

The ultimate responsibility for any violations of the provisions of Section 21-35-1 et seq. rests with either the members of the governing authority authorizing unlawful expenditures in excess of budgeted amounts or with the clerk (or the appropriate individual of the fiscal or finance department established pursuant to Section 21-17-15) in issuing warrants in excess of budgeted amounts, or with all such officers or employees. Crisler, Mar. 24, 2006, A.G. Op. 06-0033.

CHAPTER 37

Streets, Parks and Other Public Property

Sec.
21-37-1. Municipal buildings.
21-37-3. Streets, sidewalks, sewers and parks.
21-37-4. Governing authorities of municipalities to maintain roads, driveways, parking lots and grounds of public schools located within municipal corporate boundaries.
21-37-5. Sidewalks.
21-37-6. Installation of ramps at municipal crosswalks.
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21-37-25. Repealed
21-37-27. Parking facilities for motor vehicles; funding.
21-37-29. Parking meters.
21-37-31. Advertising signs on parking meters.
21-37-32. Municipalities authorized to delegate authority for enforcement of parking regulations.
21-37-33. Park commission; election and removal of park commissioners; advisory park and recreation commission.
21-37-35. Park commission; funding.
21-37-37. Park commissioner; powers and duties of commissioners.
21-37-39. Park commission; disposition of revenues.
21-37-41. Park commission; construction of certain laws.
21-37-43. Tax levy for parks and playgrounds.
21-37-45. Insuring of municipal property.
21-37-47. Exercise of eminent domain by municipalities.
21-37-49. Purchase of lands sold to state.
21-37-51. Surveys and maps.
21-37-53. Disposal of certain property not purchased with public funds by certain municipalities.
21-37-55. Conveyance of land in slum, blighted or urban renewal areas to urban renewal agencies by certain municipalities.

§ 21-37-1. Municipal buildings.

The governing authorities of every municipality may construct, erect, purchase and equip a suitable, convenient, and creditable city, town or village hall, necessary schools, fire and police stations, and all necessary buildings for the offices and court of the municipality, for the meetings of the governing authorities, and for such other purposes, including public meetings of the citizens, as may be designated by ordinance.

SOURCES: Codes, 1892, §§ 2952, 3005; 1906, §§ 3343, 3403; Hemingway's 1917, §§ 5840, 5933; 1930, §§ 2419, 2541; 1942, § 3374-106; Laws, 1950, ch. 491, § 106, eff from and after July 1, 1950.

Cross References — Authority for bond issue for joint construction of jails by counties and municipalities, see § 17-5-1.

Exercise of eminent domain by municipality, see § 21-37-47.

Requirement that plaques on buildings financed with funds of state or political subdivision acknowledge contribution of taxpayers, see § 29-5-151.

Invalidity of "hold harmless" clauses in public and private construction contracts, see § 31-5-41.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

Where a city is empowered to build a new city hall, money realized from the sale of its old city hall may be used in aid of building the new one. Marshall v. City of Meridian, 103 Miss. 206, 60 So. 135 (1912).

An amendment to a city charter, authorizing it to build a new city hall, impliedly authorizes it to abandon the use of its old city hall. Marshall v. City of Meridian, 103 Miss. 206, 60 So. 135 (1912).

A provision in a contract for the erection of a municipal school building that the constructor shall "provide, pay for and furnish all materials, etc.," is for the city alone, and does not entitle a materialman to priority of payment over the builder's assignee in case of the builder's insolvency and insufficiency of the balance due under the contract for the payment of both claims. Peck-Hammond Co. v. Williams, 77 Miss. 824, 27 So. 995 (1900).

ATTORNEY GENERAL OPINIONS

Literacy program conducted for benefit of public by non-profit organization falls within contemplation of statute setting forth permissible uses of municipal buildings. Allen, July 25, 1991, A.G. Op. #91-0502.

A town may use, at no charge. the facilities of a church for holding town meetings, may also lease for fair market value the facilities of a church for holding town meetings, and may purchase a church building for fair market value for use as a town hall. Hatcher, October 9, 1998, A.G. Op. #98-0606.

A municipality has authority to lease a building. Hatcher, Dec. 28, 1999, A.G. Op. #99-0660.

A town is entitled to terminate or disconnect the sewer service to customers of the sewer system who are not paying their bills for such service. There must be some process by which customers may dispute questionable charges. Richardson, Feb. 2, 2004, A.G. Op. 04-0011.

If a town disconnects a sewer, it may be reconnected to the customers' septic tank. Richardson, Feb. 2, 2004, A.G. Op. 04-0011.

RESEARCH REFERENCES

Am Jur. 17 Am. Jur. 2d, Contractors' Bonds §§ 27, 73, 75.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 541 et seq.

7 Am. Jur. Legal Forms 2d, Dedication § 86:21 (quitclaim deed dedicating land to city for public use).

7 Am. Jur. Legal Forms 2d, Dedication § 86:35 (dedication for purpose of school).

18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, Counties, and Other Political Subdivisions, Form 92 (complaint, petition, or declaration against city for sum due on municipal building and construction contract).

18 Am. Jur. Pl & Pr Forms (Rev), Municipal, State, and School Tort Liability, Form 91 (claim, injury caused by negligent construction of public building).

11 Am. Jur. Trials 189, Condemnation of Urban Property.

CJS. 29A C.J.S., Eminent Domain § 47.

64 C.J.S., Municipal Corporations §§ 1978, 1979.

§ 21-37-3. Streets, sidewalks, sewers and parks.

(1) Except as otherwise provided in subsection (2) of this section, the governing authorities of municipalities shall have the power to exercise full jurisdiction in the matter of streets, sidewalks, sewers, and parks; to open and lay out and construct the same; and to repair, maintain, pave, sprinkle, adorn, and light the same.

(2) Section 63-3-208, shall govern the use of electric personal assistive mobility devices (as defined in Section 63-3-103) on streets and sidewalks.

SOURCES: Codes, 1892, § 2947; 1906, § 3338; Hemingway's 1917, § 5835; 1930, § 2414; 1942, § 3374-129; Laws, 1950, ch. 491, § 129; Laws, 2003, ch. 485, § 4, eff from and after July 1, 2003.

Cross References — Levying taxes for street purposes, see § 21-33-89.

Companion authority for construction and maintenance of sidewalks, see § 21-37-5.

Establishment of park commission, its funding, powers and duties, and disposition of revenues received, see §§ 21-37-33 et seq.

Exercise of eminent domain by municipality, see § 21-37-47.

Restrictions imposed on the governing authority of a municipality with respect to the employment of labor for working and maintaining the streets during the four-month period preceding a general primary election for of municipal offices, see § 23-15-885.

Local parking and traffic regulations, see § 63-3-211.

Refund by county of certain road taxes collected, see § 65-15-21.

Payment of road tax refund requiring application to board of supervisors, see § 65-15-23.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.
7. —Dedication, or conveyance to municipality.
8. —Regulation of drivers of motor vehicles; reckless driving.
9. Sewers.
10. Streets and sidewalks, in general.
11. —Bridges.
12. —Railroad crossings.
13. Streets and sidewalks, abutting owners.

14. Liability for injuries on streets or sidewalks.
15. —Notice of defects in streets or sidewalks.

I. Under Current Law.

1. In general.

City's ordered termination of two dead-end streets did not order the closure of active streets under Miss. Code Ann. § 21-37-7, but simply ordered the aforementioned streets to remain unchanged from their current condition. The city, therefore, acted appropriately under Miss. Code Ann. § 21-37-3, and the construction company which filed a preliminary plat seeking extension of said streets to its subdivision was owed no compensation. Charles E. Morgan Constr. Co. v. City of Starkville, 909 So. 2d 1145 (Miss. Ct. App. 2005).

City may reopen street it has chosen to close; only requirement is that city reopen street through process of eminent domain as opposed to use of ordinance rescinding order closing street. City of Jackson v. McAllister, 475 So. 2d 432 (Miss. 1985).

Municipality is not liable for injuries sustained in one car accident on municipal street where plaintiff's tenuous theory of accident, that municipality failed to properly maintain street resulting in large hole in street which caused accident is contradicted by photographs submitted by plaintiff as well as by municipality and where, in addition, eyewitness testifying on behalf of plaintiff testifies that plaintiff's photograph does not represent hole seen by eyewitness after accident. Johnson v. City of Pass Christian, 475 So. 2d 428 (Miss. 1985).

Where a city changed the drainage on a street, draining an additional area of surface water onto land which had not been subjected to such surface waters for at least the previous 14 years, and where such surface drainage caused erosion, piled up debris and filth, and damaged or destroyed a fishing pond contained on the property, the property owners were entitled to a mandatory injunction requiring the city to adopt some method to prevent the flooding of their land. City of McComb v. Rodgers, 246 So. 2d 913 (Miss. 1971).

2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

The power given municipalities to grant utility franchises and the right to use their streets and public places are subject to legislative control. Delta Elec. Power Ass'n v. Mississippi Power & Light Co., 250 Miss. 482, 149 So. 2d 504 (1963), appeal dismissed, cert. denied, 375 U.S. 77, 84 S. Ct. 196, 11 L. Ed. 2d 142 (1963), reh'g denied, 375 U.S. 981, 84 S. Ct. 478, 11 L. Ed. 2d 428 (1964).

This section confers no authority on a municipality to repair, maintain or pave a road outside its corporate limits. Logan v. City of Clarksdale, 240 Miss. 716, 128 So. 2d 537 (1961).

Mere statutory authority to construct sewers or drains does not impose any duty to exercise such authority and, unless the duty is positively imposed by the state, the municipality has discretion to determine whether it will construct a system of drains and sewers, as well as discretion to determine the nature, extent, capacity, and cost of the system, the time and manner of construction, the method of financing its construction and maintenance; and the city cannot be compelled to exercise discretion regarding the construction of sewer system. City of Greenville v. Queen City Lumber Co., 227 Miss. 749, 86 So. 2d 860 (1956).

A commercial carrier of passengers for hire in a municipality must obtain a franchise before the carrier can operate for those purposes. Payne v. Jackson City Lines, 220 Miss. 180, 70 So. 2d 520 (1954).

A nonexclusive franchise of a common carrier for passengers for hire is a valuable property right, and the carrier is entitled to relief by way of an injunction against a threatened or actual injury to his property rights through illegal competition of another common carrier of passengers for hire. Payne v. Jackson City Lines, 220 Miss. 180, 70 So. 2d 520 (1954).

The continuous use of an unplatted and undedicated passageway between the rear stores by their proprietors and customers over a period of more than fifty years did not authorize the claim of a municipality to such passageway as a public alley or highway against the fee owners of the land. Stuart v. Town of Morton, 200 Miss. 160, 26 So. 2d 246 (1946).

A city is under a duty to exercise reasonable care to make its parks reasonably safe places for people to resort to, and city is liable for negligence in the maintenance thereof. Harllee v. City of Gulfport, 120 F.2d 41 (5th Cir. 1941).

A case in which plaintiff's damages to his land caused by concentrating the flow of the water thereon from outlet ditch from street drains was held nominal. Watkins v. Board of Mayor & Aldermen, 113 Miss. 38, 73 So. 867 (1917).

In actions against a city for injuries due to negligence in the operation of an electric light plant operated by the city, liability must be determined by the same rules applicable to individuals and private corporations conducting like enterprises. Yazoo City v. Birchett, 89 Miss. 700, 42 So. 569 (1906).

A city which had contracted with a water company for a supply of pure and wholesome water was not estopped to complain that the water furnished did not reach such standard, although, prior to the contract, the city had accepted samples of the water like that thereafter furnished. Meridian Waterworks Co. v. Mayor of Meridian, 85 Miss. 515, 37 So. 927 (1905).

The fact that the contract of a city with a water company for the furnishing of first-class fire protection mentioned the different sizes of pipe which might be used in constructing the system did not limit the obligation of the company to furnish first-class fire protection, nor preclude the city from complaining that such protection was not furnished, although the pipes used complied with those mentioned in the contract. Meridian Waterworks Co. v. Mayor of Meridian, 85 Miss. 515, 37 So. 927 (1905).

7. —Dedication, or conveyance to municipality.

A stipulation in a deed conveying property to a city for a street which constitutes a condition subsequent for a cancellation of the deed does not relieve the grantor from taxes to maintain street. Kimball v. City of Jackson, 118 Miss. 789, 80 So. 3 (1918).

On land donated to a municipality for a park, the municipality had authority to construct or permit the construction of a statute of one of the donors thereon, where such statute does not deprive the public of the park as a pleasure ground. Brahan v. City of Meridian, 111 Miss. 30, 71 So. 170 (1916).

A case where land was platted and mapped into lots and blocks with intervening streets and the city afterwards extended its limits to include said platted territory and worked part of the streets, held that the city accepted the dedication of the streets, including those not graded and repaired. City of Jackson v. Laird, 99 Miss. 476, 55 So. 41 (1911).

Where an owner impliedly dedicated a strip of land for a street by platting it and making a map and selling the lots as laid out, the fact that a municipality for more than ten years thereafter used only a portion of the land designated as a street did not deprive it of the right to use the entire strip for a street when necessary for the convenience of the public. Indianola Light, Ice & Coal Co. v. Montgomery, 85 Miss. 304, 37 So. 958 (1904).

Under a devise "for a public park" a municipality may take and hold land convenient and accessible therefor although it lies without the corporate limits and the charter confers no express authority to own land outside. Lester v. Mayor of Jackson, 69 Miss. 887, 11 So. 114 (1892).

8. —Regulation of drivers of motor vehicles; reckless driving.

Ordinance prohibiting children under fifteen from driving automobiles held not void as conflicting with statutes. Somerville v. Keeler, 165 Miss. 244, 145 So. 721 (1933).

It is held that a license fee of $1.00 charged motor vehicle drivers is n ot a revenue measure and may be imposed by a city on those who operate a motor vehicle in its streets. Wasson v. City of Greenville, 123 Miss. 642, 86 So. 450 (1920).

The driving of an auto at an unlawful and dangerous speed upon a frequently used street in a populous part of a city is negligence per se. Ulmer v. Pistole, 115 Miss. 485, 76 So. 522 (1917).

An auto driver who fails to look both ways at a street intersection is guilty of negligence. Ulmer v. Pistole, 115 Miss. 485, 76 So. 522 (1917).

9. Sewers.

Town failing to prevent employee of highway department from removing covering to storm sewer opening was responsible for resulting injury. Town of Senatobia v. Dean, 157 Miss. 207, 127 So. 773 (1930).

However, a city was not liable for injuries caused by negligence in replacing cesspool cover by employee of a sanitary contractor designated by the city, but whose work was on behalf the property owner, he not being in the employ of the city. City of Gulfport v. Shepperd, 116 Miss. 439, 77 So. 193 (1918).

An instance where the city is held liable for damage to plaintiff's property by conducting its offal into a private sewage and depositing it on plaintiff's property. Thompson v. City of Winona, 96 Miss. 591, 51 So. 129, Am. Ann. Cas. 1912B,449 (1910).

After notice to a city that private sewerage is connected with its gutters along the sides of a street whereby the offal is carried to a vacant lot, which creates a nuisance, and renders an adjoining house uninhabitable, city is liable for damage where it does not prevent such condition. Mayor of Vicksburg v. Richardson, 90 Miss. 1, 42 So. 234 (1906).

10. Streets and sidewalks, in general.

Municipality has duty to exercise ordinary care to keep its streets reasonably safe for use by persons exercising reasonable care and caution. Owens v. Town of Booneville, 206 Miss. 345, 40 So. 2d 158 (1949).

A state highway, projecting into or through a municipality, becomes a street and subject to municipal control, unless the statute expressly and clearly provides otherwise. City of Ellisville v. State Hwy. Comm'n, 186 Miss. 473, 191 So. 274 (1939).

Former section confers upon municipalities that full jurisdiction in respect of streets, such as parking of automobiles and the regulation thereof, and includes control over primary state highways within the boundaries of the municipality; the statutory provision (§ 8037, Code 1942), requiring the State Highway Commission to pave the streets used by it in towns of less than 2500 population in conformity with the dimensions and material used in the state highway, and the provision (§ 8038, Code 1942), placing exclusive control in the Highway Commission of all state highways fixed "as roads" did not modify the power of the municipality, particularly in view of the limitations contained in the last section. City of Ellisville v. State Hwy. Comm'n, 186 Miss. 473, 191 So. 274 (1939).

Municipal authorities had power to contract for construction of curbs and gutters and paving of streets. United States Fid. & Guar. Co. v. City of Canton, 157 Miss. 680, 128 So. 744 (1930).

City accepting contractor's bond containing provision requiring city to give surety notice before making final payment assumed such obligation. United States Fid. & Guar. Co. v. City of Canton, 157 Miss. 680, 128 So. 744 (1930).

Under former section streets may be devoted to any proper use incidental to construction and maintenance of a public thoroughfare, although the city may be liable to abutting property owners for damages sustained by them in making drains or ditches. City of Laurel v. Hearn, 143 Miss. 201, 108 So. 491 (1926).

Crossings over gutters or ditches other than public crossings over street intersections must be kept in reasonable repair, but municipality is under no obligation to maintain or repair a private bridge over a ditch or street unless used by the general public. City of Meridian v. Peterson, 132 Miss. 7, 95 So. 625 (1923).

The power of a municipality over its streets under an ordinary charter is subject to legislative control. Hodges v. Western Union Tel. Co., 72 Miss. 910, 18 So. 84 (1895).

The statute under which ten years' adverse possession of land confers title does not apply against the right of a municipality to its streets, though there may be cases where the doctrine of estoppel in pais may be used against a municipality. Witherspoon v. City of Meridian, 69 Miss. 288, 13 So. 843 (1891).

11. —Bridges.

A municipality has a superior jurisdiction to the county, over a bridge across a bayou on a street within a city. Town of Isola v. Humphreys County, 99 So. 147 (Miss. 1924).

If a defect in a bridge was concealed and not observable by ordinary care and attention a municipality is not liable. Cohea v. Mayor of Coffeeville, 69 Miss. 561, 13 So. 668 (1891).

12. —Railroad crossings.

A railroad company having the power granted by the legislature to cross any "public road or way" has the right to cross streets as well as country roads. Mayor of Canton v. Canton Cotton Whse. Co., 84 Miss. 268, 36 So. 266, 105 Am. St. R. 428 (1904).

The legislature may divest a municipality of control over its streets and authorize their use by a corporation without compensating the municipality. Mayor of Canton v. Canton Cotton Whse. Co., 84 Miss. 268, 36 So. 266, 105 Am. St. R. 428 (1904).

A railroad company having the right to do all acts incidental to the maintenance of its road may lay conduits under the surface of its right of way to conduct water to its buildings although they pass under streets of municipalities. Mayor of Canton v. Canton Cotton Whse. Co., 84 Miss. 268, 36 So. 266, 105 Am. St. R. 428 (1904).

A foreign railroad company having this right may lay such conduits although it has no right to exercise the power of eminent domain. Mayor of Canton v. Canton Cotton Whse. Co., 84 Miss. 268, 36 So. 266, 105 Am. St. R. 428 (1904).

13. Streets and sidewalks, abutting owners.

In suit against city for damages allegedly caused by diversion of surface water from street onto plaintiff's land, an instruction to jury that it was plaintiff's duty to mitigate damages and that they could not recover any damages that could have been prevented by expenditure of reasonable sum was reversible error in absence of any proof by defendant and in view of the fact that plaintiffs had no right to go onto street to correct the situation because of this section. Poteete v. City of Water Valley, 207 Miss. 173, 42 So. 2d 112 (1949).

Although he may collect damages by virtue of Section 17, Constitution 1890, an abutting property owner may not interfere with the power of a municipality by an injunction to refrain from or alter a change in the grade of a street. City of Water Valley v. Poteete, 203 Miss. 382, 33 So. 2d 794 (1948).

Although a city is liable for damages inflicted on abutting property by improper use of streets in providing drain, yet streets may be devoted to any proper use incident to construction and maintenance of public thoroughfare. City of Laurel v. Hearn, 143 Miss. 201, 108 So. 491 (1926).

A city held entitled to peremptory instructions in suit against it for injury to abutting property because of ditch in front of property, on account of the absence of testimony showing the drain was not necessary, and where negligence in maintaining the ditch was neither charged nor proven. City of Laurel v. Hearn, 143 Miss. 201, 108 So. 491 (1926).

The statutes with reference to a commission form of government do not authorize a municipality to repair paved streets and assess the cost thereof against abutting property owners. Stevens v. City of Hattiesburg, 133 Miss. 824, 98 So. 231 (1923).

Where an abutting property owner by petition requests a city to grade a street to proper lines and grades and the city does so without objection from the owner, the owner is estopped from claiming damages from such grading. Adams v. City of Vicksburg, 124 Miss. 369, 86 So. 855 (1921).

A city renders itself liable of damages where its barricades in a street which it was improving interfered with ingress and egress from and to plaintiff's property. Funderburk v. City of Columbus, 117 Miss. 173, 78 So. 1 (1918).

Damage will accrue to one who had bought and paid for the property and had rented it to the former owner, who was then in possession, although the purchaser had no deed. Funderburk v. City of Columbus, 117 Miss. 173, 78 So. 1 (1918).

Where a city damages the property of a private person for the general welfare in the change of a grade of a street the city is liable. Funderburk v. City of Columbus, 117 Miss. 173, 78 So. 1 (1918).

A city may be estopped from injuring or damaging an abutting owner's property while it stood on a strip of ground in the street at a place designated by the city's engineer acting for the city, upon which to build said property. City of Jackson v. Merchants' Bank & Trust Co., 112 Miss. 537, 73 So. 573 (1917).

Where it is reasonably necessary to improve the street or highway a municipality may remove shade trees therefrom without being liable to abutting property owners, but if it is not necessary that they be removed for such purpose municipality will be liable. Town of Durant v. Castleberry, 106 Miss. 699, 64 So. 657 (1914).

That it will be necessary to raise plaintiff's residence, surface her yard and lay a walk held to be evidential facts by which damage may be established, by the changing of a grade of a street. Murphy v. City of Meridian, 103 Miss. 110, 60 So. 48 (1912).

Negligence in fact must be shown before a city is liable for interference with drainage of surface waters by a change in the grade of a street. Chidsey v. City of Pascagoula, 102 Miss. 709, 59 So. 879 (1912).

A case in which the city required a property owner to construct a sidewalk conforming to a certain grade within twenty days or show cause for failure to do so, which changed the grade of the street in front of the property, held that the owners did not by constructing the sidewalk in conformity to the order after the twenty days, waive her right to damages for being thereby forced to raise her lot and houses thereon to conform to the grade. City of Jackson v. Muckenfuss, 101 Miss. 555, 58 So. 533 (1912).

Adjacent property owners are the owners of trees in front of such lots between the sidewalk and street and a telephone company is liable for damage and trespass for destroying such trees. Brahan v. Meridian Home Tel. Co., 97 Miss. 326, 52 So. 485 (1910).

And a city is without authority to authorize destruction of such trees by a telephone company without making compensation to the owner; but, the city may itself remove such trees if they interfere with the free use of the street. Brahan v. Meridian Home Tel. Co., 97 Miss. 326, 52 So. 485 (1910).

A city does not have authority to contract away its charter power in order to require the paving of streets where it assesses a part of the cost to the abutting property. Edwards Hotel & City R. Co. v. City of Jackson, 96 Miss. 547, 51 So. 802 (1910).

Any property owner adjacent to an obstruction in a sidewalk, suffering peculiar or special damage therefrom, may enjoin the maintenance of such obstruction. Caldwell v. George, 96 Miss. 484, 50 So. 631 (1909).

A permanent obstruction of a street or sidewalk used by the public throughout its full length and breadth cannot be permitted. Caldwell v. George, 96 Miss. 484, 50 So. 631 (1909).

An abutting owner, whether he owns the fee to the street or it is in the municipality, is entitled to compensation for any additional servitude placed on his property by any use of the street not incidental or necessary to its enjoyment by the public. Town of Hazlehurst v. Mayes, 84 Miss. 7, 36 So. 33 (1904).

But without compensating him a municipality may trim trees standing between the sidewalk and the street to any extent necessary to prevent interference with the wires of an electric light plant erected by it. Town of Hazlehurst v. Mayes, 84 Miss. 7, 36 So. 33 (1904).

14. Liability for injuries on streets or sidewalks.

Municipality has no authority to surrender any jurisdiction or authority conflicting with its duty to keep streets, alleys, and sidewalks in reasonably safe condition. Town of Senatobia v. Dean, 157 Miss. 207, 127 So. 773 (1930).

The erection of a bumper in a street intersection held to be negligence. Mayor of City of Vicksburg v. Harralson, 136 Miss. 872, 101 So. 713, 39 A.L.R. 777 (1924).

A municipality agreeing for a county to improve and maintain a street is not relieved of its duty to the public to keep such street in a reasonably safe condition for travel. Atkinson v. Town of Decatur, 131 Miss. 707, 95 So. 689 (1923).

A city may allow part of its street for wire poles to be erected; city is not liable for one recklessly leaving traveled way and colliding with poles between street and sidewalk. A city's duty as to its street does not require it to insure the safety of reckless drivers; a vehicle user is not entitled to entire street and municipality's duty is performed if the traveled way is adequate. Gulfport & Miss. Coast Traction Co. v. Manuel, 123 Miss. 266, 85 So. 308 (1920).

The declaration is demurrable where it alleges that the plaintiff, a pedestrian, was injured while crossing a regular street crossing from striking her foot against a brick or stone which the city had allowed to remain firmly embedded in the crossing and extending 2 or 3 inches above the ground. Pomes v. McComb City, 121 Miss. 425, 83 So. 636 (1919).

Municipalities are held not insurers of safety of travelers over their streets; however, they are obliged to keep them in a reasonable condition of safety for the traveling public using them in the usual way and exercising reasonable care and the city should neglect no part of its streets. Higginbottom v. Village of Burnsville, 113 Miss. 219, 74 So. 133 (1917).

And a plaintiff crossing a dangerous place of which he had knowledge in the street in the night and thinking he had passed said dangerous place held not to be guilty of negligence. Higginbottom v. Village of Burnsville, 113 Miss. 219, 74 So. 133 (1917).

The size of the municipality and the amount of known traffic over a given street may be considered in determining the municipality's negligence, but these circumstances alone will not relieve it from liability for injuries resulting from its negligence. Higginbottom v. Village of Burnsville, 113 Miss. 219, 74 So. 133 (1917).

A case in which a horse was drowned as a result of becoming frightened at a boiler near the street, in which the city is held not to be liable for negligence. City of Hazlehurst v. Shows, 113 Miss. 263, 74 So. 122 (1917).

The lessee of certain premises upon which a billboard stood may be liable to a party for injury caused from the billboard falling upon him while walking along the sidewalk, but the city will not be liable. Dahmer v. City of Meridian, 111 Miss. 208, 71 So. 321 (1916).

The fact that some of the bricks of a sidewalk were missing causing a slight depression of about 3 inches does not show negligence authorizing a recovery for damages by a pedestrian who fell in stepping into one of the holes. City of Meridian v. Crook, 109 Miss. 700, 69 So. 182 (1915).

A city is held liable for injuries caused by defects in a bridge constructed over a gutter or ditch which is no part of a cross walk used for those desiring to go from the street to the sidewalk. Hardin v. City of Corinth, 105 Miss. 99, 62 So. 6 (1913).

In an action against a municipality for damages resulting from a collision with an obstruction alleged to have been negligently placed in a street, the liability depends on the existence of negligence on its part in the location of the obstruction on the one hand and the contributory negligence of the plaintiff in colliding with it on the other, and these are matters of fact to be determined by the jury. City of Meridian v. McBeath, 80 Miss. 485, 32 So. 53 (1902).

The extent of the obligation of a city is to keep its streets reasonably safe for general use. It is not required to have them in such condition as to insure the safety of reckless drivers. Walker v. Mayor of Vicksburg, 71 Miss. 899, 15 So. 132 (1894).

Ordinary care over its streets is the measure of diligence imposed upon municipal corporations. Nesbitt v. City of Greenville, 69 Miss. 22, 10 So. 452, 30 Am. St. R. 521 (1891).

Where an obstruction in a street is created by a municipality or permitted to be erected by another, it must take notice of such defects as ordinary care will discover. Nesbitt v. City of Greenville, 69 Miss. 22, 10 So. 452, 30 Am. St. R. 521 (1891).

An instruction for the defendant in an action against a city to recover for the death of plaintiff's decedent, caused by the fall of a water tank in the street, when a decayed sill gave way, was erroneous. Nesbitt v. City of Greenville, 69 Miss. 22, 10 So. 452, 30 Am. St. R. 521 (1891).

15. —Notice of defects in streets or sidewalks.

A municipality is not authorized to require written notice to the city of a defect in a sidewalk prior to an accident as a condition precedent to liability. City of Meridian v. Raley, 238 Miss. 304, 118 So. 2d 342 (1960).

Unless a municipality has either actual or constructive notice of a defect in its streets it will not be liable for damages caused thereby. City of Hattiesburg v. Reynolds, 124 Miss. 352, 86 So. 853 (1921).

Constructive notice of a defect in a street attributable to city is a question of fact. City of Greenville v. Middleton, 124 Miss. 310, 86 So. 804 (1921).

If the officials of a town know of the defective condition of a street they are negligent in not repairing the same, and render the town liable for injuries to one passing thereover. Saxon v. Town of Houlka, 107 Miss. 161, 65 So. 124 (1914).

If a city allows a part of its sidewalks to continue in a dangerous condition of repair for several months without taking precautions to give warning of the danger it is liable for damages to a person passing thereover although she knew of the defect, but at the time had forgotten it and the night was too dark for her then to observe its condition. City of Natchez v. Lewis, 90 Miss. 310, 43 So. 471 (1907).

An instruction was improperly modified where it stated that the city must actually know of the defect by inserting after the word "actually" the words "constructively or impliedly." City of Greenwood v. Harris, 89 Miss. 121, 42 So. 538 (1906).

Where defects in a street were created by the municipality itself in the prosecution of a public work and ordinary care would have discovered them, it is chargeable with notice of them. City of Jackson v. Carver, 82 Miss. 583, 35 So. 157 (1903).

A municipality may have such constructive or implied notice of defects in its streets as to render it liable for damages resulting therefrom. City of Jackson v. Carver, 82 Miss. 583, 35 So. 157 (1903).

A municipality is liable for an injury suffered by the occupants of a carriage because of defects of a street of which it had due notice. City of Natchez v. Shields, 74 Miss. 871, 21 So. 797 (1897).

Common knowledge, the action of the elements and the like is chargeable to a municipal corporation as in the case of natural persons. Nesbitt v. City of Greenville, 69 Miss. 22, 10 So. 452, 30 Am. St. R. 521 (1891).

ATTORNEY GENERAL OPINIONS

There is no authority for municipality to maintain gravel roadway located on private property and which has not become public road by dedication, prescription or statutory procedures, even though school buses use road. Fortier, Oct. 28, 1992, A.G. Op. #92-0828.

Municipality has authority and affirmative duty to repair and maintain city streets and to this end, municipality may contract with railroad company to improve railroad crossings at intersections of city streets and may use municipal funds, employees and equipment for such purposes; however, municipality must obtain approval of Department of Transportation of contracts concerning railroad crossings and of improvements made by municipality at railroad crossings; furthermore, municipality may not contract to assume responsibility or costs of improvements which are by law responsibility of railroad. Scott, Nov. 3, 1993, A.G. Op. #93-0727.

Municipalities have authority to accept the dedication of unpaved streets and to construct streets and sidewalks pursuant to Section 21-37-3. The governing authorities of a municipality may adopt a policy which sets forth the standards and specifications which streets and alleys must meet in order for the governing authorities to accept them as municipal streets and alleys, i.e., requirements as to paving, width, curbs, drains, etc. We note that the governing authorities must implement the policy in a manner which complies with principles of equal protection. Grimley, November 15, 1996, A.G. Op. #96-0746.

Annexation ordinance provides that the city of Vicksburg has the responsibility for maintaining streets and levee roadbeds in the Warren County Port Commission territory it annexed. Thomas, Varner, March 20, 1998, A.G. Op. #98-0130, 98-0131.

Provided the work performed is under the supervision and control of the governing authorities and such work is for the public convenience and necessity, a municipality may expend public funds to replace existing sidewalks, create on-street parking, provide street landscaping and lighting, all upon the public rights of way according to a property owner's plans and specifications in connection with a private construction and renovation project. Hammack, April 3, 1998, A.G. Op. #98-0153.

In connection with a private construction and renovation project, a city has the authority to assist the owner in replacing sidewalks, creating on-street parking, and providing street landscaping and lighting by providing labor and equipment to perform the work, provided the owner furnishes the material and the work is done only on the public right-of-way. Hammack, April 3, 1998, A.G. Op. #98-0153.

A town may pave an alley if it is a public street or thoroughfare. Sutherland, December 23, 1998, A.G. Op. #98-0793.

A school district and a city may enter into an interlocal agreement for the provision of traffic control, although the duty to enforce traffic regulations lies with the police department and it can not withhold its services solely because of the lack of such an agreement. Noble, January 15, 1999, A.G. Op. #98-0714.

Subject to any contractual agreements that may exist between a municipality and a public utility, the municipality has the power to grant the right to erect poles and string wires on public rights-of-way and is empowered to govern and regulate the manner of such use, including, without limitation, requiring that all such lines be placed underground. Fortier, Jan. 25, 2000, A.G. Op. #99-0725.

The governing authorities of municipalities have full and complete jurisdiction over streets and, therefore, the governing authorities of a county and city must obtain an easement in order to lay a sewer line in the right-of-way of the road or street within a town's corporate limits. Wagner IV, Oct. 20, 2000, A.G. Op. #2000-0608.

Cities may perform extra maintenance on state highways over and above what the Department of Transportation is required to perform by law, as long as the work is approved by the department, which retains primary responsibility over said roads. Baker, Nov. 3, 2000, A.G. Op. #2000-0652.

Municipalities may close public streets temporarily for public purposes, e.g., pending construction work, parades and festivals, regulation of traffic, or other valid purposes under the police power, and this authority includes the authority to temporarily close streets to prevent injury to, destruction of, or interference with public or private property, based upon a finding of necessity; however, absent exigent circumstances, there is no authority for a municipality to regularly prohibit use of a public street at night by some citizens while allowing use of it by others. Hedglin, June 6, 2002, A.G. Op. #02-0150.

There is no authority for a municipality to make improvements to streets which have not been dedicated to the municipality, are not public streets and are not accessible to the general public. Stockton, Feb. 14, 2003, A.G. Op. #03-0051.

Governing authorities of a town may by ordinance designate areas along streets and on rights-of-way where the public may park vehicles and they may prohibit parking in specific areas; they may also by ordinance prohibit residents from leaving debris and abandoned vehicles on rights-of-way. Dailey, May 30, 2003, A.G. Op. 03-0270.

No statutory authority can be found which would permit school employees to search a student vehicle that is parked on a city street, to designate parking on a city street or to control traffic flow of a city street; however, a school district and a city may enter into an interlocal agreement for the provision of traffic control, and city and county law enforcement agencies are authorized to contract with school districts for the provision of police protection. Taylor, July 7, 2003, A.G. Op. 03-0334.

The expenditure of funds by the city of Horn Lake in furtherance of the extension of Nail Road and the construction of an interchange at the intersection with I-55, is permissible using the mechanism of an interlocal cooperation agreement for joint action between the two municipalities involved. Campbell, Oct. 1, 2004, A.G. Op. 04-0469.

Municipal governing authorities have the authority perform work on private property to alleviate flooding on a municipal street which creates a danger to the driving public. Stockton, May 13, 2005, A.G. Op. 05-0220.

If streets are determined not to be dedicated city streets and are the property of a community college, then the provisions of Section 37-29-67 authorize the board of trustees to gate the streets for the protection and safety of students, guests, faculty and employees. Smith, Nov. 9, 2005, A.G. Op. 05-0566.

An interlocal agreement between the a city and county is not required for the county to make improvements to a city street. However, the city must consent to or enter an agreement with the county for any proposed work on city streets by the entering of an order on the minutes of both the board of aldermen and the board of supervisors in order for the county to be able to perform any type of work or assistance on a city street or road. Davis, Dec. 27, 2005, A.G. Op. 05-0611.

A county may not impose and collect street assessments associated with improvements to a city street. The city may pay and the county may accept amounts in consideration of work that the county performs. Davis, Dec. 27, 2005, A.G. Op. 05-0611.

Governing authorities may allow gates, cameras, speed bumps or other similar devices on public municipal streets as long as such streets remain fully and equally accessible to all members of the general public. Mills, Apr. 28, 2006, A.G. Op. 06-0053.

Where a county road is constructed in an annexed area after the annexation is finalized but before it is "pre-cleared" by the U. S. Justice Department under Section 5 of the Voting Rights Act, such road, upon preclearance, becomes a city street and the city becomes responsible for its maintenance. Brown, Nov. 10, 2006, A.G. Op. 06-0564.

Community college police have the powers of a constable pursuant to Miss Code Ann. § 37-29-275 and are authorized to enforce state laws within their jurisdiction, but do not have authority to enforce municipal or campus ordinances on municipal streets that run through the campus. Campus police officers may assist in the enforcement of municipal parking ordinances on municipal streets by notifying municipal authorities when violations occur. A determination of the validity of "campus tickets" may only be made by a court of competent jurisdiction. Graham, March 16, 2007, A.G. Op. #07-00138, 2007 Miss. AG LEXIS 102.

RESEARCH REFERENCES

ALR. Municipal establishment or operation of off-street public parking facilities. 8 A.L.R.2d 373.

Abutting owner's right to damages for limitation of access caused by conversion of conventional road into limited-access highway. 42 A.L.R.3d 13.

Power of municipal corporation to limit exclusive use of designated lanes or streets to buses and taxicabs. 43 A.L.R.3d 1394.

Validity and construction of regulation by municipal corporation fixing sewer-use rates. 61 A.L.R.3d 1236.

Validity of governmental borrowing or expenditure for purposes of acquiring, maintaining or improving stadium for use of professional athletic team. 67 A.L.R.3d 1186.

Liability of local government entity for injury resulting from use of outdoor playground equipment at municipally owned park or recreation area. 73 A.L.R.4th 496.

Am Jur. 17 Am. Jur. 2d, Contractors' Bonds §§ 27, 73, 5.

26 Am. Jur. 2d, Eminent Domain §§ 63, 67-70, 73, 74.

39 Am. Jur. 2d, Highways, Streets, and

Bridges §§ 1-8, 10, 44, 21, 31-45, 72-75, 264.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 543 et seq.

7 Am. Jur. Legal Forms 2d, Dedication § 86:31 (dedication for purpose of street).

7 Am. Jur. Legal Forms 2d, Dedication § 86:32 (dedication for purpose of park and recreational area).

7A Am. Jur. Legal Forms 2d, Easements § 94:36 (grant for construction and maintenance of public highway by governmental subdivision on railway property).

7A Am. Jur. Legal Forms 2d, Easements § 94:51 (easement for construction and maintenance of highway).

9A Am. Jur. Legal Forms 2d, Highways, Streets, and Bridges §§ 134:10 et seq. (establishment of highways).

9A Am. Jur. Legal Forms 2d, Highways, Streets, and Bridges §§ 134:96 et seq. (construction, improvement, and maintenance of highways).

9 Am. Jur. Pl & Pr Forms (Rev), Drains and Drainage Districts, Forms 51 et seq. (construction, maintenance, and operation of drains or sewers).

9 Am. Jur. Pl & Pr Forms (Rev), Eminent Domain, Forms 1 et seq. (condemnation proceedings, authority, purpose, necessity and commencement).

13A Am. Jur. Pl & Pr Forms (Rev), Highways, Streets, and Bridges Forms 1 et seq. (streets and highways, liability of public agencies and authorities).

13A Am. Jur. Pl & Pr Forms (Rev), Highways, Streets, and Bridges, Form 533 (petition or application by abutting owner for writ of mandamus to compel maintenance and repair of public road).

13A Am. Jur. Pl & Pr Forms (Rev), Highways, Streets, and Bridges, Forms/et seq. (liability of public agencies and authorities).

18 Am. Jur. Pl & Pr Forms (Rev), Municipal, School, and State Tort Liability, Forms 131 et seq. (claim or complaint, streets, sidewalks or alleys involved in injury).

18 Am. Jur. Pl & Pr Forms (Rev), Municipal, School, and State Tort Liability, Forms 161 et seq. (claim or complaint, injury involving sewers and drains).

19 Am. Jur. Pl & Pr Forms (Rev), Parks, Squares, and Playgrounds, Forms 41 et seq. (delicts in maintenance of grounds or facilities).

5 Am. Jur. Proof of Facts 713, Highways.

8 Am. Jur. Proof of Facts 2d 361, Municipality's Failure, in Making Street Repairs, to Avoid Injury to Adjacent Property.

8 Am. Jur. Trials 57, Condemnation of Rural Property for Highway Purposes.

11 Am. Jur. Trials 189, Condemnation of Urban Property.

CJS. 29A C.J.S., Eminent Domain §§ 30, 31, 41, 48.

64 C.J.S., Municipal Corporations §§ 1782 et seq., 1963 et seq., 1995-1997 et seq.

§ 21-37-4. Governing authorities of municipalities to maintain roads, driveways, parking lots and grounds of public schools located within municipal corporate boundaries.

The governing authorities of any municipality, in their discretion, may grade, gravel, shell, overlay, repair and maintain gravel, shell, asphalt or concrete roads, driveways and parking lots and grounds of public schools located within the corporate boundaries of the municipality. Before engaging in such work, the governing authorities shall spread upon their minutes, the written request of the school board for the work, the written approval of the governing authorities for the work and the specific location of the road, driveway, parking lot or school grounds to be worked.

SOURCES: Laws, 1996, ch. 310, § 1, eff from and after July 1, 1996.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in this section. The subsection "(1)" designation was deleted from the beginning of the section (the section had a (1) but no (2)). The Joint Committee ratified the correction at its April 28, 1999 meeting.

Cross References — Maintenance of roads, driveways, parking lots and grounds of public schools, and private roads or driveways used as school bus turnarounds by county board of supervisors, see § 19-3-42.

ATTORNEY GENERAL OPINIONS

Whether removal of concrete steps is "repair or maintenance" of school grounds pursuant to this section is a factual determination for the municipal governing authorities. Bankston, Aug. 27, 2004, A.G. Op. 04-0427.

§ 21-37-5. Sidewalks.

The governing authorities of municipalities shall have the power to cause sidewalks to be constructed and maintained, to determine the material, plans, specifications and grades of the same, and to levy and collect taxes, by special assessment, for the payment of the same.

SOURCES: Codes, 1892, § 2944; Laws, 1906, § 3335; Hemingway's 1917, § 5832; 1930, § 2411; 1942, § 3374-126: Laws, 1950, ch 491, § 126, eff from and after July 1, 1950.

Cross References — Companion authority for construction and maintenance of sidewalks, see § 21-37-3.

Exercise of eminent domain by municipality, see § 21-37-47.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.
7. —Negligence in construction or maintenance; liability for injuries.
8. —Obstructions on sidewalks.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

Legislature may validate municipality's unauthorized Act which legislature could constitutionally authorize originally. Barron v. City of McComb, 163 Miss. 337, 141 So. 765 (1932).

Legislature may authorize construction of sidewalks by municipality without giving abutting owners opportunity to protest or construct improvements themselves. Barron v. City of McComb, 163 Miss. 337, 141 So. 765 (1932).

Defects in ordinances for construction of sidewalks, curbs, and gutters failing to give property owners opportunity to protest against construction or to construct improvements themselves, held cured by validating Act and such Act was constitutional. Barron v. City of McComb, 163 Miss. 337, 141 So. 765 (1932).

A municipality, by legislative authority, may impose the cost of paving sidewalks as a lien on abutting land of different owners according to the front-foot rule, and to do so is not a taking of private property for public use without compensation. Wilzinski v. City of Greenville, 85 Miss. 393, 37 So. 807 (1905).

7. —Negligence in construction or maintenance; liability for injuries.

A municipality is not authorized to require written notice to the city of a defect in a sidewalk prior to an accident as a condition precedent to liability. City of Meridian v. Raley, 238 Miss. 304, 118 So. 2d 342 (1960).

Municipality must keep streets and public walkways in reasonably safe condition. City of Jackson v. Clark, 152 Miss. 731, 118 So. 350 (1928).

Notwithstanding contributory negligence on the part of the plaintiff a city is liable for injuries sustained by the plaintiff where it was negligent in permitting unguarded hole to remain in sidewalk for a long period of time. Jordan v. City of Lexington, 133 Miss. 440, 97 So. 758 (1923).

The burden of proof is on the plaintiff to show negligence of the city in its construction or maintenance of a sidewalk. City of Meridian v. Crook, 109 Miss. 700, 69 So. 182 (1915).

Negligence is not presumed from an accident caused by catching the foot in a sidewalk plank. Town of Union v. Heflin, 104 Miss. 669, 61 So. 652 (1913).

Plaintiff's mere knowledge of the defective condition of a street did not of itself preclude his recovery for an injury received in passing over same, but it is a question for the jury whether he exercised ordinary diligence commensurate with such knowledge in passing over such street. Birdsong v. Town of Mendenhall, 97 Miss. 544, 52 So. 795 (1910).

It is negligence on the part of a city to allow part of its sidewalk to remain in a dangerous condition for travel for several months without taking precautions to give warning of the danger and a person injured thereby on a dark night, who had temporarily forgotten the condition of the street, may recover damages. City of Natchez v. Lewis, 90 Miss. 310, 43 So. 471 (1907).

An adult using a sidewalk near his boarding-house for the sole purpose of playing with his dog cannot recover of the municipality for injuries sustained because of defects therein. Jackson v. City of Greenville, 72 Miss. 220, 16 So. 382, 48 Am. St. R. 553 (1894).

8. —Obstructions on sidewalks.

Streets and sidewalks are for the use of the public over their entire length and width, and a city cannot permit a permanent obstruction of a sidewalk in the absence of legislative authority, and if it grant such permission it is void and affords no protection in a suit to enjoin the obstruction. Caldwell v. George, 96 Miss. 484, 50 So. 631 (1909).

And property owners adjacent to such obstructions who suffer peculiar or special damage therefrom may enjoin its maintenance. Caldwell v. George, 96 Miss. 484, 50 So. 631 (1909).

A plaintiff who does not have perfect title in himself need only show an interest in the land as abutting owner which entitles him to ingress and egress to such property in order to compel removal of obstructions placed in the street in front of such property. Shoemaker v. Coleman, 94 Miss. 619, 47 So. 649 (1908).

Under an ordinance making it unlawful to place goods on a sidewalk, an affidavit which simply charges defendant with obstructing a sidewalk by allowing barrels to remain thereon, without charging that he placed them there, charges no offense. Giardina v. City of Greenville, 70 Miss. 896, 13 So. 241 (1893).

ATTORNEY GENERAL OPINIONS

Provided the work performed is under the supervision and control of the governing authorities and such work is for the public convenience and necessity, a municipality may expend public funds to replace existing sidewalks, create on-street parking, provide street landscaping and lighting, all upon the public rights of way according to a property owner's plans and specifications in connection with a private construction and renovation project. Hammack, April 3, 1998, A.G. Op. #98-0153.

In connection with a private construction and renovation project, a city has the authority to assist the owner in replacing sidewalks, creating on-street parking, and providing street landscaping and lighting by providing labor and equipment to perform the work, provided the owner furnishes the material and the work is done only on the public right-of-way. Hammack, April 3, 1998, A.G. Op. #98-0153.

Governing authorities of a town may by ordinance designate areas along streets and on rights-of-way where the public may park vehicles and they may prohibit parking in specific areas; they may also by ordinance prohibit residents from leaving debris and abandoned vehicles on rights-of-way. Dailey, May 30, 2003, A.G. Op. 03-0270.

RESEARCH REFERENCES

ALR. Degree of inequality in sidewalk which makes question for jury or for court, as to municipality's liability. 37 A.L.R.2d 1187.

Municipal liability for injuries from snow and ice on sidewalk. 39 A.L.R.2d 782.

Am Jur. 39 Am. Jur. 2d, Highways, Streets, and Bridges § 75.

9A Am. Jur. Legal Forms 2d, Highways, Streets, and Bridges § 134:118 (petition by property owners to establish sidewalk).

9A Am. Jur. Legal Forms 2d, Highways, Streets, and Bridges § 134:125 (agreement by property owners to set aside land for sidewalk).

13A Am. Jur. Pl & Pr Forms (Rev), Highways, Streets, and Bridges, Forms 231 et seq. (sidewalks, liability of public agencies and authorities).

18 Am. Jur. Pl & Pr Forms (Rev), Municipal, School, and State Tort Liability, Form 131 (claim, injury caused by dangerous condition of public way or sidewalk).

11 Am. Jur. Trials 189, Condemnation of Urban Property.

§ 21-37-6. Installation of ramps at municipal crosswalks.

Every municipality shall install ramps at crosswalks, in both business and residential areas, when making new installations of sidewalks, curbs or gutters, or improving or replacing existing sidewalks, curbs or gutters, so as to make the transition from street to sidewalk easily negotiable for physically handicapped persons in wheelchairs and for other persons who may have difficulty in making the required step up or down from curb level to street level.

The term "ramps" as used herein means a sloping asphalt or concrete surface, from the level of the sidewalk or curb to the level of the street at curbside, extending outward and downward from the curb to the street for such a distance, at such an angle, and at such a width as will facilitate the movement up and down such ramps of persons in wheelchairs or persons who have difficulty in stepping up or down between curb level and street level.

SOURCES: Laws, 1975, ch. 326, eff from and after passage (approved March 6, 1975).

§ 21-37-7. Closing streets.

The governing authorities of municipalities shall have the power to close and vacate any street or alley, or any portion thereof. No street or alley or any portion thereof shall be closed or vacated, however, except upon due compensation being first made to the abutting landowners upon such street or alley for all damages sustained thereby.

SOURCES: Codes, 1892, § 2945; 1906, § 3336; Hemingway's 1917, § 5833; 1930, § 2412; 1942, § 3374-127; Laws, 1950, ch. 491, § 127, eff from and after July 1, 1950.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.
7. —Right of abutting owners or others to compensation.
8. Safety of public.

I. Under Current Law.

1. In general.

Judgment upholding the adoption of Mendenhall, Miss., Ord. 244, which closed and vacated a portion of a street, was reversed and the case was remanded with instructions to the City to provide reasons for the ordinance as no reason was given for the adoption of the ordinance and the matter could not be reviewed; while the City had the authority under Miss. Code Ann. § 21-37-7 to close and vacate a street, it had to find the closing was for the public good under Miss. Code. Ann. §§ 21-13-1, 21-13-3 and 21-37-7. Hopkins v. City of Mendenhall, — So. 3d —, 2013 Miss. App. LEXIS 42 (Miss. Ct. App. Jan. 29, 2013).

City's order closing a bridge to traffic was an exercise of the city's authority under Miss. Code Ann. § 21-37-7; the closing marked the end of the city's previously-existing duty to maintain and repair the bridge, such that the property owners had no claim against the city. Hobson v. City of Vicksburg, 848 So. 2d 199 (Miss. Ct. App. 2003), affirmed by 2003 Miss. App. LEXIS 622 (Miss. Ct. App. June 17, 2003).

Section 21-37-7, which requires that due compensation be made to all adjoining landowners, applies only where the governing authority of a municipality closes or vacates an alley, not where the alley is closed under a theory of abandonment. R & S Dev., Inc. v. Wilson, 534 So. 2d 1008 (Miss. 1988).

2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

Owners of property left in a cul-de-sac by the closing of a portion of a street to permit construction of a new highway are entitled to damages. Mississippi State Hwy. Comm'n v. Fleming, 248 Miss. 187, 157 So. 2d 792 (1963).

A suit for damages in anticipation that the city would close an alley in violation of statute, and that the State Highway Commission would enter upon the alley and obstruct it by a dirt embankment was prematurely brought where no damages had yet resulted. Collins v. Mississippi State Hwy. Comm'n, 233 Miss. 474, 102 So. 2d 678 (1958).

An ordinance proposing to close a portion of a street lying between school property and public park which in effect converted the public park into a school playground, contrary to the purposes for which the park was dedicated, was void. Board of Mayor & Aldermen v. Wilson, 232 Miss. 435, 99 So. 2d 674 (1958).

Where there was a finding by chancellor that closing of street was for public good, in a suit by landowners, whose land did not abut on the closed section of the street, closing ordinance did not violate the constitution. Puyper v. Pure Oil Co., 215 Miss. 121, 60 So. 2d 569 (1952).

The adoption of street closing ordinance was itself a determination by the mayor and board of aldermen that the public interest and welfare required that the street be closed. Puyper v. Pure Oil Co., 215 Miss. 121, 60 So. 2d 569 (1952).

An ordinance which closed a street did not in effect constitute a donation of portion of right of way of an old highway to private corporation in violation of the constitution, despite the fact that upon closing the abandoned right of way reverted by operation of law to the abutting property owner. Puyper v. Pure Oil Co., 215 Miss. 121, 60 So. 2d 569 (1952).

Where full power is granted to authorities of municipality to vacate streets, they may act upon their own motion and any petition of property owners as a basis of the proceeding is not necessary in the absence of statute requiring it. Puyper v. Pure Oil Co., 215 Miss. 121, 60 So. 2d 569 (1952).

Where a section of a street was closed by an ordinance and where the landlord landowners whose lands did not abut on section of the street which was closed and who had sufficient and adequate access to and from their lands after the closing and also sustained no special damage other than that suffered by public at large, these landowners were not deprived of property without due process of law by the enactment of the ordinance. Puyper v. Pure Oil Co., 215 Miss. 121, 60 So. 2d 569 (1952).

The courts of the state have jurisdiction to grant relief against improperly closing an alley by ordinance as such act is a judicial and not a legislative act. Polk v. City of Hattiesburg, 109 Miss. 872, 69 So. 675 (1915), error overruled, 110 Miss. 80, 69 So. 1005 (1915).

One who in pursuance of an ordinance closed a street was not subject to punishment under a statute prohibiting the closing of public highways, which statute did not refer to streets in municipalities. Blocker v. State, 72 Miss. 720, 18 So. 388 (1895).

7. —Right of abutting owners or others to compensation.

City's ordered termination of two dead end streets did not order the closure of active streets under Miss. Code Ann. § 21-37-7, but simply ordered the aforementioned streets to remain unchanged from their current condition. The city, therefore, acted appropriately under Miss. Code Ann. § 21-37-3, and the construction company which filed a preliminary plat seeking extension of said streets to its subdivision was owed no compensation. Charles E. Morgan Constr. Co. v. City of Starkville, 909 So. 2d 1145 (Miss. Ct. App. 2005).

Under former section an abutting owner may recover at least nominal damages for the closing of a street or alley. Mississippi State Hwy. Comm'n v. Jacobs, 248 Miss. 476, 160 So. 2d 201 (1964), motion overruled, 248 Miss. 482, 161 So. 2d 526 (1964).

Recovery of damages for the flooding of plaintiff's premises in consequence of an embankment closing one end of an alley upon which they abutted is not permissible under a declaration seeking damages for destruction of the usefulness of the alley as a means of access. Mississippi State Hwy. Comm'n v. Rhymes, 248 Miss. 468, 160 So. 2d 197 (1964), motion overruled, 248 Miss. 475, 161 So. 2d 527 (1964).

One not an abutting owner, who will be compelled by the closing of an alley to take a less direct route to his place of business, is not a "person aggrieved" by a determination of the city to close the alley, so as to be entitled to appeal therefrom. City of Hattiesburg v. Colson, 236 Miss. 237, 109 So. 2d 868 (1959).

Mortgagees of abutting lots are not "persons aggrieved" so as to have a right to appeal from the city's determination to close an alley, unless the adequacy of their security will be impaired by such closing. City of Hattiesburg v. Colson, 236 Miss. 237, 109 So. 2d 868 (1959).

Since the city had no power to close an alley except upon first making due compensation to the abutting landowners, if the city had closed the alley without making due compensation and the State Highway Commission had entered upon and obstructed it by a dirt embankment, the city and Highway Commission would have been jointly liable. Collins v. Mississippi State Hwy. Comm'n, 233 Miss. 474, 102 So. 2d 678 (1958).

Where complainants' property, which fronted on city street, was divided in half by a highway and where also access to each half was obstructed by highway median strip, which was extended across the street at highway intersection without the city's consent, the complainants were abutting property owners under former section [Code 1942, § 3374-127]. Hamilton v. Mississippi State Hwy. Comm'n, 220 Miss. 340, 70 So. 2d 856 (1954).

The general rule is that one whose property does not abut on the closing section of the street has no right to compensation for the closing or vacation of the street, if he still has reasonable access to the general system of the streets. Puyper v. Pure Oil Co., 215 Miss. 121, 60 So. 2d 569 (1952).

Landowner not entitled to compensation for closing of street which did not abut his property. Town of Wesson v. Swinney, 144 Miss. 867, 110 So. 669 (1926).

However, unless the abutting owner has special easement in the use of street in connection with his property for egress or regress he cannot complain of its abandonment by the city. City of Jackson v. Welch, 136 Miss. 223, 101 So. 361 (1924).

Where such abutting owner has other convenient access to his property by other streets he cannot complain of the closing of a street which does not deprive him of such convenient and reasonable access. City of Jackson v. Welch, 136 Miss. 223, 101 So. 361 (1924).

Authority to vacate streets given under this section does not empower a municipality to vacate them, on a condition reserving a right to re-open it, without making compensation to abutting owners, as such a condition is void. Berry v. Town of Mendenhall, 104 Miss. 94, 61 So. 163 (1913).

Where a continuous street although known by different names at the north and south ends, formed a continuous street in front of plaintiff's property, it is held that plaintiff was an "abutting owner" and the city could not vacate the street and permit the erection of a railroad depot therein without first making compensation to plaintiff. Alabama & V. Ry. Co. v. Turner, 95 Miss. 594, 52 So. 261 (1910).

This section does not require compensation to be first paid to a person damaged by closing a street who has no property abutting such street where closed. Poythress v. Mobile & O.R. Co., 92 Miss. 638, 46 So. 139 (1908).

Where it is made to appear to the authorities that the safety of the public demands it, it is within their power to close a street and a person being damaged thereby may recover damages against the city for so doing. Poythress v. Mobile & O.R. Co., 92 Miss. 638, 46 So. 139 (1908).

This section does not dispense with the necessity of compensating abutting property owners. Laurel Imp. Co. v. Rowell, 84 Miss. 435, 36 So. 543 (1904).

When a municipality closes a street it deprives the owners of abutting land of a right which is property and which cannot be taken except on due compensation being first made under Const. 1890 § 17. Laurel Imp. Co. v. Rowell, 84 Miss. 435, 36 So. 543 (1904).

8. Safety of public.

Trial court properly upheld a city's closure of a portion of a road because without the closure, an intersection would impede the flow of vehicular traffic and constitute a danger to the safety of the traveling public; landowners were not entitled to compensation because their properties did not abut the closed portion of the road. Mill Creek Properties v. City of Columbia, 944 So. 2d 67 (Miss. Ct. App. 2006), writ of certiorari denied by 946 So. 2d 368, 2006 Miss. LEXIS 731 (Miss. 2006).

ATTORNEY GENERAL OPINIONS

Statute authorizes contempt proceedings to enforce order of court, including orders sentencing defendant to community work service. Donald, March 23, 1992, A.G. Op. #92-0194.

If a factual determination is made that a street has been abandoned by a city, title automatically reverts to the adjoining landowners with no need to formally convey the property; when there is no presumption of abandonment and a factual determination is made that it would be in the public interest to close a street, abutting landowners are entitled to due compensation if damages are sustained. Donald, Aug. 1, 1997, A.G. Op. #97-0402.

Municipalities may close public streets temporarily for public purposes, e.g., pending construction work, parades and festivals, regulation of traffic, or other valid purposes under the police power, and this authority includes the authority to temporarily close streets to prevent injury to, destruction of, or interference with public or private property, based upon a finding of necessity; however, absent exigent circumstances, there is no authority for a municipality to regularly prohibit use of a public street at night by some citizens while allowing use of it by others. Hedglin, June 6, 2002, A.G. Op. #02-0150.

The term "abutting landowners" in this section means only those property owners whose land abuts directly on that portion of street to be closed. Compensation is only due if the governing authorities close or vacate an alley or street by ordinance, and the abutting property owners have incurred damages. Young, Feb. 14, 2005, A.G. Op. 05-0051.

If a city chooses to dispose of a dedicated street, it must first vacate the street pursuant to Section 21-37-7. Herring, Sept. 11, 2006, A.G. Op. 06-0419.

Under Miss. Code Ann. § 21-17-1, a municipality may always dispose of its municipal property when it has ceased to use the property for a municipal purpose after making the requisite findings. A municipality may accept construction of turn lane improvements on existing right-of-way property by a private owner. Stockton, March 23, 2007, A.G. Op. #07-00144, 2007 Miss. AG LEXIS 121.

RESEARCH REFERENCES

Am Jur. 39 Am. Jur. 2d, Highways, Streets, and Bridges §§ 131-133.

§ 21-37-9. Railroad crossings.

The governing authorities of municipalities shall have the power and authority to regulate the crossings of railways, and to provide precautions and prescribe rules regulating the same. Said authorities shall have the power and authority to make any other and further provisions, rules and regulations to prevent accidents at crossings and on the tracks of railroads, and to prevent fires from engines. Said authorities shall have the power and authority to require railroad companies to erect viaducts over or gates across their tracks at the crossing of streets.

SOURCES: Codes, 1892, § 2974; 1906, § 3369; Hemingway's 1917, § 5866; 1930, § 2447; Laws, § 3374-152; Laws, 1950, ch. 491, § 152, eff from and after July 1, 1950.

Cross References — Duties of railroad company regarding highway crossings and bridges, see § 77-9-251.

JUDICIAL DECISIONS

1. In general.

A city ordinance requiring railroads to light their crossings is within the authority conferred by this section [Code 1942, § 3374-152]. Illinois Cent. R.R. v. Williams, 242 Miss. 586, 135 So. 2d 831 (1961).

RESEARCH REFERENCES

Am Jur. 39 Am. Jur. 2d, Highways, Streets, and Bridges § 295.

§ 21-37-11. Lights and lamp posts.

The governing authorities of municipalities shall have the power to provide for the lighting of streets, parks and public grounds, and the erection of lamps and lamp posts.

SOURCES: Codes, 1892, § 2964; 1906, § 3360; Hemingway's 1917, § 5857; 1930, § 2437; 1942, § 3374-146; Laws, 1950, ch. 491, § 146, eff from and after July 1, 1950.

Cross References — Kind of special improvements authorized, see § 21-41-3.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

A city is under a duty to exercise reasonable care to make its parks reasonably safe places for people to resort to, and city is liable for negligence in the maintenance thereof. Harllee v. City of Gulfport, 120 F.2d 41 (5th Cir. 1941).

The acquisition of property by a municipality for public use as a street carries with it the right to make passage over it safe and convenient, and to light it for that purpose. Gulf Coast Ice Mfg. Co. v. Bowers, 80 Miss. 570, 32 So. 113 (1902).

Municipalities having the power to light streets may contract with another to furnish lights and license the use of the streets for that purpose. Gulf Coast Ice Mfg. Co. v. Bowers, 80 Miss. 570, 32 So. 113 (1902).

Such inconveniences to the person and disfigurements of adjacent property as result from the erection of electric light poles and wires in a street if subject to compensation at all, are conclusively presumed to have been paid for in the original acquisition of the street. Gulf Coast Ice Mfg. Co. v. Bowers, 80 Miss. 570, 32 So. 113 (1902).

Under the charter of the city of Vicksburg the municipal authorities had power to make a valid contract for electric lights without advertising for bids and without submitting the matter to a popular vote. Reid v. Trowbridge, 78 Miss. 542, 29 So. 167 (1901).

ATTORNEY GENERAL OPINIONS

Generally, a municipality may not use public funds to pay for electricity for street lights on private property or along private streets for the benefit of property owners, although, in appropriate circumstances, municipalities may provide lighting for prevention of crime and for the benefit and safety of the general public. McGee, Jan. 31, 1992, A.G. Op. #91-0973.

RESEARCH REFERENCES

ALR. Liability of municipal corporation for injury or death occurring from defects in, or negligence in construction, operation, or maintenance of its electric street-lighting equipment, apparatus, and the like. 19 A.L.R.2d 344.

Am Jur. 26 Am. Jur. 2d, Eminent Domain § 49.

13 Am. Jur. Pl & Pr Forms (Rev), Highways, Streets, and Bridges, Form 61.5 (complaint, petition, or declaration-against municipality — negligent maintenance of "T" intersection).

§ 21-37-13. Municipal piers, pavilions, and bath houses.

The governing authorities of municipalities shall have the power and authority to own, operate, and regulate, for public recreation and pleasure purposes, on any tidewaters or navigable streams within or on the border of the municipal limits, piers, pavilions, bath houses, and other like appropriate structures, either by the use of streets or public landings of the municipality or landings purchased or procured for the purpose. Said municipal governing authorities are authorized to issue municipal bonds for the purpose of the acquisition and construction of the aforesaid improvements, such bonds to be issued under the general statutes of the state as in other cases.

SOURCES: Codes, 1930, § 2430; 1942, § 3374-142; Laws, 1928, ch. 189; Laws, 1950, ch. 491, § 142, eff from and after July 1, 1950.

Cross References — Exercise of eminent domain by municipality, see § 21-37-47.

RESEARCH REFERENCES

ALR. Violation of governmental regulations as to conditions and facilities of swimming pools as affecting liability in negligence. 79 A.L.R.4th 461.

Am Jur. 26 Am. Jur. 2d, Eminent Domain § 62.

18 Am. Jur. Pl & Pr Forms (Rev), Municipal, School, and State Tort Liability, Form 104 (complaint, negligence, injuries from broken glass on swimming pool's dressing room floor).

CJS. 29A C.J.S., Eminent Domain §§ 38, 39.

§ 21-37-15. Harbors, wharves, and docks.

The governing authorities of municipalities shall have the power to construct all needful improvements in the harbor; to control, guide, or deflect the current of a river; to repair and regulate public wharves and docks; to charge and collect levee rates and wharfage on firewood, lumber, timber, logs, shingles, staves, posts, laths, and other articles brought to the port of such municipality; and to set aside or lease portions of the wharf for special purposes. However, a permit to use any portion of a wharf or a lease of the same shall not be granted for a term exceeding twenty-five years.

SOURCES: Codes, 1892, § 2953; 1906, § 3344; Hemingway's 1917, § 5841; 1930, § 2420; 1942, § 3374-134; Laws, 1950, ch. 491, § 134, eff from and after July 1, 1950.

Cross References — Definition of the term "navigable waters," see § 1-3-31.

Exercise of eminent domain by municipality, see § 21-37-47.

Creation of harbor commission, see § 59-1-1.

Powers of municipality with harbor that is a port of entry, see § 59-3-1.

Lien on watercraft in favor of municipality operating dockage and anchorage facilities, see § 85-7-9.

RESEARCH REFERENCES

ALR. Propriety of injunctive relief against diversion of water by municipal corporation or public utility. 42 A.L.R.3d 426.

Am Jur. 26 Am. Jur. 2d, Eminent Domain § 62.

39 Am. Jur. 2d, Highways, Streets, and Bridges § 261.

20A Am. Jur. Legal Forms 2d, Wharves and Port Facilities § 265:23 (lease of port facilities).

20A Am. Jur. Legal Forms 2d, Wharves and Port Facilities § 265:24 (license agreement for use of port facilities).

25 Am. Jur. Pl & Pr Forms (Rev), Wharves, Form 22 (complaint, petition, or declaration for damages for goods lost in collapse of public wharf).

CJS. 29A C.J.S., Eminent Domain §§ 38, 39.

36A C.J.S., Ferries §§ 9 et seq.

64A C.J.S., Municipal Corporations § 1987 et seq.

94 C.J.S., Wharves §§ 19 et seq.

§ 21-37-17. Curb markets.

The governing authorities shall have the power to establish and maintain, and to provide for the governing and regulation of curb markets. When such municipality owns such curb market, it shall have the power to fix the rental value thereof, and the stalls and booths therein. However, no municipality shall prohibit the producer of meats and other foodstuffs from selling his produce to consumers in any quantity that seller and buyer may agree upon.

SOURCES: Codes, 1892, § 2935; 1906, § 3326; Hemingway's 1917, § 5823; 1930, § 2403; 1942, § 3374-121; Laws, 1916, ch. 223; Laws, 1950, ch. 491, § 121, eff from and after July 1, 1950.

Cross References — Counties' establishing farmers' markets, see § 19-5-73.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

A city is not obliged to maintain a market-house, and hence may discontinue the use of public property as such. Marshall v. City of Meridian, 103 Miss. 206, 60 So. 135 (1912).

A municipality was not empowered by former section to impose a greater privilege tax on meat markets than fifty per centum of the state license tax on the same, as provided by § 3452. City of Biloxi v. Barries, 78 Miss. 657, 29 So. 466 (1901).

Municipalities can only impose a privilege tax on meat markets equal to one half the state privilege tax thereon. Harris v. City of Water Valley, 78 Miss. 659, 29 So. 401 (1901).

When a municipality comes under the operation of the chapter entitled "Municipalities," all its powers under its original charter cease, save such as are kept alive by the provisions of that chapter. Harris v. City of Water Valley, 78 Miss. 659, 29 So. 401 (1901).

Under a charter giving the right "to regulate the vending of meats brought into the city for sale" and "to license, tax and regulate butchers," a municipality may adopt ordinances to prevent retailing of fresh meats from 4 p. m. to 9 a. m. except by persons licensed. Porter v. City of Water Valley, 70 Miss. 560, 12 So. 828 (1893).

RESEARCH REFERENCES

Am Jur. 39 Am. Jur. 2d, Highways, Streets, and Bridges §§ 263, 264, 295, 296.

CJS. 64 C.J.S., Municipal Corporations § 2003 et seq.

§ 21-37-19. Public library.

The governing authorities of municipalities shall have the power to maintain one or more libraries for public use, and to regulate the use thereof.

SOURCES: Codes, 1892, § 2965; 1906, § 3361; Hemingway's 1917, § 5858; 1930, § 2438; 1942, § 3374-147; Laws, 1950, ch. 491, § 147, eff from and after July 1, 1950.

Cross References — Exercise of eminent domain by municipality, see § 21-37-47. Details of state-wide library service, see §§ 39-3-1 et seq.

RESEARCH REFERENCES

Am Jur. 11 Am. Jur. Trials 189, Condemnation of Urban Property.

CJS. 29A C.J.S., Eminent Domain § 47.

§ 21-37-20. Contributions to public library outside corporate limits by municipality without public library.

The governing authorities of any municipality which has no public library located within its corporate limits, in their discretion, may make contributions from any available funds of the municipality for the support, upkeep and maintenance of any public library which is located outside of the corporate limits of the municipality and which provides services to a public junior college or state institution of higher learning.

SOURCES: Laws, 1988, ch. 414, eff from and after July 1, 1988.

§ 21-37-21. Public cemeteries; cemetery board of trustees authorized in certain municipalities.

The governing authorities of municipalities shall have the power and authority to maintain, repair, and enlarge all of the public cemeteries owned or controlled by such municipalities, within or without the municipal limits, at the expense of the treasury of such municipality.

Should there be situated wholly within the corporate limits of any municipality a cemetery which, because of age, abandonment of graves by private owners, or for other good cause, is not being properly maintained, and thereby becomes detrimental to the public health and welfare, and should the governing authorities of that municipality determine that it is to the best interest of the said municipality that the municipality assume the maintenance of such cemetery, then such governing authorities shall have the power and they are hereby authorized to acquire title to such cemetery by gift, purchase, eminent domain, or otherwise and are authorized to thereafter maintain, repair, enlarge, fence or otherwise improve such cemetery.

The governing authorities of any municipality having a population in excess of seven thousand five hundred according to the latest available federal census and being located in a county having an area in excess of eight hundred twenty-five square miles which is traversed by a link of the National System of Interstate and Defense Highways, may, in its discretion, appoint a cemetery board of trustees of not less than five nor more than seven members to serve for staggered terms of office with full power and authority to administer and operate its cemetery, including but not limited to authority for the establishment of a fund, from a portion of the proceeds from the sale of cemetery lots, to be held in trust and invested by said trustees to the end of insuring perpetual care and maintenance of said cemetery with the least possible tax levies. The municipal governing authorities and the trustees are authorized and empowered to promulgate and adopt reasonable rules and regulations, not inconsistent with law, deemed essential in carrying out the provisions of this section.

SOURCES: Codes, 1942, § 3374-165; Laws, 1944, ch. 212; Laws, 1950, ch. 491, § 165; Laws, 1956, ch. 402; Laws, 1962, ch. 544, eff from and after passage (approved May 10, 1962).

Cross References — Municipality's general powers, see § 21-17-1.

Levying taxes for cemetery purposes, see § 21-33-89.

Exercise of eminent domain by municipality, see § 21-37-47.

ATTORNEY GENERAL OPINIONS

A municipality has authority to repair and maintain public cemeteries owned or controlled by the municipality, but may not repair or maintain a cemetery in the absence of a deed vesting title to the cemetery in the municipality or other evidence of a property interest, such as a designation of the cemetery as public property on the map or plat in the office of the chancery clerk. Null, Apr. 6, 2001, A.G. Op. #01-0201.

The sales of cemetery plots in a municipally owned cemetery are not subject to the requirements for sales of real property found in § 21-17-1. Jordan, May 28, 2004, A.G. Op. 04-0204.

As long as the acceptance of the gift of a parcel of land upon which a cemetery is located complies with the provisions of Section 21-37-21, a town may accept the gift. Berry, Sept. 15, 2006, A.G. Op. 06-0430.

A municipality may acquire title to previously-sold individual burial lots by gift, purchase, prescription provided that it can show the elements of adverse possession or eminent domain upon making the requisite findings. Thomas, Nov. 3, 2006, A.G. Op. 06-0534.

RESEARCH REFERENCES

ALR. Validity, construction, and application of statutes or ordinances regulating perpetual-care trust funds of cemeteries and mausoleums. 54 A.L.R.5th 681.

Am Jur. 14 Am. Jur. 2d, Cemeteries § 4.

26 Am. Jur. 2d, Eminent Domain § 55.

4 Am. Jur. Legal Forms 2d, Cemeteries §§ 54:11 et seq. (dedication of cemetery).

5A Am. Jur. Pl & Pr Forms (Rev), Cemeteries, Forms 11, 12 (cemetery, restraining establishment and maintenance).

8 Am. Jur. Trials 57, Condemnation of Rural Property for Highway Purposes.

11 Am. Jur. Trials 189, Condemnation of Urban Property.

CJS. 29A C.J.S., Eminent Domain § 46.

§ 21-37-23. Parking facilities for motor vehicles; establishment and operation authorized.

The governing authorities of any municipality shall have the power and authority, in their discretion, to establish and construct municipal parking facilities for motor vehicles belonging to members of the general public, and to rent, lease, purchase, or otherwise acquire the necessary lands and property for the establishment or construction of such facilities, in any manner now authorized by law for the acquisition of land and property for public purposes. All acts and things heretofore done and performed by any municipality of this state in the securing, establishing and construction of public parking lots within the limits of said municipality are hereby ratified and confirmed.

Such municipal governing authorities are empowered to operate and prescribe rules, regulations and rates for the use and operation of such parking facility. Such municipal governing authorities are empowered to employ, fix, and pay the compensation of necessary operating personnel. Such municipal governing authorities are empowered to rent, lease, or sell such facility at such price, but in no case at less than an amount sufficient to repay the cost thereof to the municipality, and on such terms as may be reasonable, but in no case at less than amounts sufficient to service and retire any bonds or notes issued in connection therewith, and conditioned that it shall continue for a specified period of time to be operated as a parking facility for the use of the public, subject to such rules, regulations and rates as may be prescribed by the municipality. No commercial enterprise activities other than the parking of motor vehicles shall be authorized by any municipality on the property comprising any part of such parking facilities.

SOURCES: Codes, 1942, § 3374-169; Laws, 1946, ch. 414; Laws, 1950, ch. 491, § 169; Laws, 1956, ch. 399; Laws, 1958, ch. 515.

Cross References — The funding of parking facilities for motor vehicles, see § 21-37-27.

Exercise of eminent domain by municipality, see § 21-37-47.

Power of certain municipalities to establish a parking and business improvement area, see §§ 21-43-1 et seq.

Invalidity of "hold harmless" clauses in public and private construction contracts, see § 31-5-41.

JUDICIAL DECISIONS

1. In general.

Any municipality in the state may establish public parking facilities and may exercise the right of eminent domain to acquire property necessary for such purpose. Jackson Redevelopment Auth. v. King, Inc., 364 So. 2d 1104 (Miss. 1978).

ATTORNEY GENERAL OPINIONS

Section 21-37-23 does not authorize municipal governing authorities to convey property to a private developer to construct a six-story hotel and reconvey the first three floors for a municipal parking facility. McCluer, Jan. 26, 2006, A.G. Op. 05-0590.

The sale or lease of a municipal parking facility pursuant to the provisions of Section 21-37-23 would not be subject to the provisions of Section 21-17-1. McCluer, Jan. 26, 2006, A.G. Op. 05-0590.

Section 21-37-23 provides specific authority for municipal governing authorities to enter into a long-term lease of a municipally owned parking facility that would not be subject to being voided by a successor board. McCluer, Jan. 26, 2006, A.G. Op. 05-0590.

RESEARCH REFERENCES

ALR. Municipal establishment or operation of off-street public parking facilities. 8 A.L.R.2d 373.

Am Jur. 26 Am. Jur. 2d, Eminent Domain § 71.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Subdivisions § 210.

8 Am. Jur. Trials 57, Condemnation of Rural Property for Highway Purposes.

11 Am. Jur. Trials 189, Condemnation of Urban Property.

CJS. 29A C.J.S., Eminent Domain §§ 48-52.

§ 21-37-25. Repealed.

Repealed by Laws, 2010, 2nd Ex Sess., ch. 30, § 7, effective from and after passage (approved Sept. 3, 2010.)

§ 21-37-25. [Codes, 1942, § 3374-169; Laws, 1946, ch. 414; Laws, 1950, ch. 491, § 169; Laws, 1956, ch. 399; Laws, 1958, ch. 515.]

Editor's Note — Former § 21-37-25 provided certain procedures to be followed by municipalities in order to establish, construct and operate a municipal parking facility for motor vehicles of members of the general public.

Cross References — Establishment and operation of parking facilities authorized, see § 21-37-23.

Funding for parking facilities, see § 21-37-27.

Enactment of an ordinance reserving parking spaces for handicapped persons, see § 27-19-56.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

An ordinance declaring that it is the purpose of the city to avail itself of the provisions of Laws 1946, ch. 414, to establish parking facilities in the city is not sufficient to authorize the city thereafter to establish such parking facilities as it may desire without the adoption of an ordinance declaring the necessity therefor. City of Jackson v. Craft, 36 So. 2d 149 (Miss. 1948).

Laws 1946, ch. 414, requires the governing authority of a municipality to determine whether the parking facility it proposes to establish is necessary and will relieve traffic congestion before it adopts the ordinance establishing the facility, and before public notice is given of the adoption thereof. City of Jackson v. Craft, 36 So. 2d 149 (Miss. 1948).

When a municipality desires to establish a parking facility, it must comply with the provisions of section 5 of the statute (Laws 1946, ch. 414) by adopting an ordinance, in language appropriate to the requirements of that section, declaring that a specified municipal parking facility is necessary to relieve street traffic congestion, the description or specification of the contemplated location being required by necessary implications. City of Jackson v. Craft, 36 So. 2d 149 (Miss. 1948).

A City Council has no authority, under Laws 1946, ch. 414 to delegate to the Mayor the duty of selecting the locality for the parking facilities it proposes to establish and determining the necessity therefor. City of Jackson v. Craft, 36 So. 2d 149 (Miss. 1948).

RESEARCH REFERENCES

ALR. Municipal establishment or operation of off-street public parking facilities. 8 A.L.R.2d 373.

Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

§ 21-37-27. Parking facilities for motor vehicles; funding.

For the purpose of securing funds to carry out Section 21-37-23, the governing authorities of such municipality are hereby authorized and empowered, in their discretion, to issue bonds or negotiable notes for the purpose of acquiring land and property for a municipal parking facility, and also for owning, erecting, building, establishing, operating and maintaining such facility, and to remodel or repair the same. Such bonds or notes shall be issued in an amount not to exceed the limitation now or hereafter imposed by law, and shall be issued in all respects, including interest rate, maturities and other details, as is now or may hereafter be provided by general law regulating the issuance of bonds or notes by corporate authorities of such municipality.

SOURCES: Codes, 1942, § 3374-169; Laws, 1946, ch. 414; Laws, 1950, ch. 491, § 169; Laws, 1956, ch. 399; Laws, 1958, ch. 515.

Cross References — Establishment and operation of parking facilities authorized, see § 21-37-23.

RESEARCH REFERENCES

ALR. Municipal establishment or operation of off-street public parking facilities. 8 A.L.R.2d 373.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 210.

§ 21-37-29. Parking meters.

The governing authorities of any municipality in this state are hereby authorized and empowered to purchase, lease or otherwise acquire, and to install and maintain parking meters for the regulation of the parking of vehicles on the municipal streets. When such parking meters are installed and operated by any municipality, the governing authorities thereof shall have the power to prescribe, by ordinance, reasonable rules and regulations for the use and operation of same, and to provide and prescribe penalties for the violation of such rules and regulations. Such governing authorities may also fix, prescribe, and collect fees for the use of the parking space adjacent to any such meters and to require that such fee shall be paid by the deposit of the appropriate coin or coins in such meters.

SOURCES: Codes, 1942, § 3374-170; Laws, 1950, ch. 491, § 170; Laws, 1956, ch. 400.

ATTORNEY GENERAL OPINIONS

Municipalities cannot immobilize a vehicle for five days and then declare it to be abandoned and sell it; however, if vehicles remain at the impoundment lot or other storage facility for the required 120 days, after due notice has been provided to the owner, they may be deemed abandoned and sold. Pace, March 10, 2000, A.G. Op. #2000-0111.

A private contractor hired by a municipality to operate public parking may not issue traffic tickets or citations. A city could authorize the contractor to immobilize or tow illegally parked vehicles if requested by law enforcement. Kohnke, May 27, 2005, A.G. Op. 05-0186.

RESEARCH REFERENCES

ALR. Permissible use of funds from parking meters. 83 A.L.R.2d 625.

Pledging parking-meter revenues as unlawful relinquishment of governmental power. 83 A.L.R.2d 649.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 210.

§ 21-37-31. Advertising signs on parking meters.

The governing authorities of any municipality, excepting those in counties bordering on the Gulf of Mexico with a population of more than 80,000, are hereby authorized and empowered to permit the placing of advertising signs upon parking meters or parking meter posts and to contract with any individual or company for the rental or lease thereof, as they may find advantageous to the municipality. The signs shall be placed in compliance with rules and regulations set out by the governing authorities of the municipality, and shall be placed in such manner so as to not obstruct the view of the street, the operation of the meters, or endanger the cars or the drivers thereof parking in front of or near the meters, or pedestrians using the sidewalks upon which the meters are located. The governing authorities shall require any person placing advertising signs upon parking meters or parking meter posts to enter into such contracts of insurance as may be necessary to protect the municipality or any person from any loss or damage caused by the presence of the advertising signs. All monies received by the municipality pursuant to the contract of lease or rental entered into shall be placed in the general fund of the city and expended for such purposes as may be authorized by law.

SOURCES: Codes, 1942, § 3374-170.5; Laws, 1952, ch. 374, § 1.

RESEARCH REFERENCES

Am Jur. 1 Am. Jur. Legal Forms 2d, Advertising §§ 12:10, 12:12, 12:14-12:16 (advertising contract, general forms).

§ 21-37-32. Municipalities authorized to delegate authority for enforcement of parking regulations.

A municipality, by ordinance duly spread upon its minutes, may delegate to an appropriate private enterprise with whom the municipality contracts all or part of the authority to enforce any ordinance concerning the regulation of parking within the confines of the municipality or any part thereof, including, but not limited to, penalties for violations, deadlines for the payment of fines and late payment penalties for fines not paid when due. The delegating ordinance may also provide that a summons or parking citation for the violation may be issued by a uniformed law enforcement officer, uniformed law enforcement employee or by uniformed personnel employed by the delegate serving under contract with the municipality.

SOURCES: Laws, 2006, ch. 572, § 7, eff from and after passage (approved Apr. 24, 2006.)

§ 21-37-33. Park commission; election and removal of park commissioners; advisory park and recreation commission.

The governing authorities of any municipality are hereby authorized and empowered, in their discretion, to create a park commission, and to elect not less than three (3) nor more than seven (7) members thereof, who shall be known as “park commissioners” of such municipality to manage and control all of the parks, playgrounds and swimming pools maintained and established in such municipality. Said park commissioners shall be qualified electors of the municipality or the county where the municipality is located and shall not hold any other municipal or county office of honor or profit. They shall receive such compensation as may be allowed by the governing authorities of such municipality. The terms of office of the commissioners, authorized to be elected hereunder shall be one (1) for one (1) year, one (1) for two (2) years, and so on for the number of members of such park commission, and thereafter the term of each commissioner shall be for a number of years as there are members of said commission. Said governing authorities shall have the power to remove any member of such commission for inefficiency or incompetency, or for any other cause.

Provided, however, the governing authorities of any municipality which has been organized under the provisions of Title 21, Chapter 8, Mississippi Code of 1972, are hereby authorized and empowered, in their discretion, to create an advisory park and recreation commission which shall serve as an advisory board to said governing authorities on all such matters in the municipality. The members of the commission shall be appointed by the governing authorities, and in those municipalities which have been divided into five (5) wards, the commission shall consist of not less than five (5) nor more than seven (7) members; in those municipalities which have been divided into seven (7) wards, the commission shall consist of not less than seven (7) nor more than nine (9) members; in those municipalities which have been divided into nine (9) wards, the commission shall consist of nine (9) members; and at least one (1) of the members of the commission shall be a resident of each of the wards of the municipality. Appointment of members of the commission by the governing authorities under this paragraph shall be made by the mayor with the confirmation of an affirmative vote of a majority of the city council present and voting at any meeting. The governing authorities of said municipality shall have vested in them all the powers and duties of a park commission as provided by law and shall be the successor in title to all real and personal property held by the park commission in existence under the previous form of government and shall be the successor to all contracts to which said previous commission was a party. The commissioners shall serve in the manner, for such term, and with such powers as said governing authorities may prescribe by ordinance.

SOURCES: Codes, 1942, §§ 3374-158, 3374-161; Laws, 1946, ch. 258, §§ 1, 4; Laws, 1950, ch. 491, §§ 158, 161; Laws, 1954, ch. 347; Laws, 1982, ch. 363; Laws, 1988, ch. 524; Laws, 2007, ch. 404, § 1, eff from and after July 1, 2007.

Cross References — Mayor-council form of government, see §§ 21-8-1 et seq.

Municipality's general powers, see §§ 21-17-1 et seq.

Section's being liberally construed, see § 21-37-41.

Creation, powers and duties of Department of Wildlife, Fisheries and Parks, see §§ 55-3-31 et seq.

ATTORNEY GENERAL OPINIONS

The statute does not preclude the governing authorities of a code charter municipality (or municipalities having any other form of government) from establishing citizens' advisory boards for any purpose deemed necessary; these individuals would not be officers of the municipality or would they be employees, however, they would merely act as advisors to the board in making decisions related to the issue for which the board, commission, or task force was created. Fortier, Aug. 31, 2001, A.G. Op. #01-0520.

Public utility commissions and park commissions whose members are appointed officers and do not serve in an advisory capacity alone have the power to manage and control the facilities, including the authority to determine whether the state flag is to be flown at those utilities. Clark, Mar. 21, 2003, A.G. Op. #03-0127.

RESEARCH REFERENCES

CJS. 64 C.J.S., Municipal Corporations §§ 1995-1997 et seq.

§ 21-37-35. Park commission; funding.

The governing authorities of any municipality having a park commission shall appropriate and pay to such park commissioners annually such funds as may be necessary, in the opinion of such governing authorities, to properly operate and maintain said parks, playgrounds and swimming pools. All funds in the hands of the park commission shall be placed in the municipal depository and shall be considered municipal funds.

SOURCES: Codes, 1942, § 3374-159; Laws, 1946, ch. 258, § 2; Laws, 1950, ch. 491, § 159, eff from and after July 1, 1950.

Cross References — Section's being liberally construed, see § 21-37-41.

§ 21-37-37. Park commissioner; powers and duties of commissioners.

The park commissioners shall elect one (1) of their numbers to serve as treasurer of the park commission, and he shall give bond in such amount as the governing authorities of the municipality shall require. Such bond shall be payable to the municipality.

The park commissioners shall have the authority to make such bylaws for the holding and conducting of their meetings and such other regulations as they may deem necessary for the safe, economic, and efficient management of such parks, playgrounds and swimming pools, and for the providing of wholesome and healthful recreation to all the citizens of such municipality. The park commissioners are authorized to elect such other officers and appoint such employees as may be necessary to maintain the said parks, playgrounds and swimming pools efficiently, and they shall have entire control and management of the said parks, playgrounds, and swimming pools, together with all property connected or in anyway appertaining to the same. The park commissioners shall have the authority to employ a park superintendent or manager, who shall have actual charge of said parks, playgrounds and swimming pools, and the enforcement and execution of all the rules, regulations and the direction of all programs and festivities, and the operation of all devices for recreation installed therein. They shall have the right to fix the salary or wage of all employees and to direct them in the discharge of their duties. They shall have the right to discharge employees, when found inefficient or for other good cause. They shall have the power to make and collect rates for use of the swimming pool and for the use of any other amusement device that may be installed in said playground, as well as the leasing of concessions or privileges for the sale of cold drinks, confections, popcorn, peanuts or other such articles, or such commission may operate such business. They are authorized to insure all property against loss by fire and tornado and to carry property damage or other miscellaneous casualty insurance, as in the discretion of said commission may be deemed proper, and pay premiums therefor out of the funds appropriated by the said governing authorities of the municipality or the revenues derived in the operation of such parks, playgrounds and swimming pools. They shall report quarterly to the governing authorities of the municipality all their doings and transactions of any kind whatsoever, and shall make a complete statement of the financial condition of such park commission at the end of each quarter. They shall annually make a detailed statement covering the entire management and operation of the said parks, playgrounds and swimming pools, and may make any recommendations which they may have for the further development of such parks, playgrounds and swimming pools. They shall purchase all supplies for said parks, playgrounds and swimming pools in the manner now provided by law for the purchase of such supplies by the governing authorities of such municipality, and shall issue vouchers in payment therefor. The park commissioners shall advertise for competitive bids in the purchase of its supplies in the manner and in the form as may be required of the governing authorities of such municipalities, and they shall make and keep full and proper books and records of all purchases and shall submit them in their quarterly and annual reports to the governing authorities of such municipality. The park commission shall have full jurisdiction of all funds coming into its possession either by appropriation of the governing authorities of the municipality or by gift or by revenue derived from the operation of said parks, playgrounds and swimming pools, and shall have authority to make all contracts in relation to the same.

SOURCES: Codes, 1942, §§ 3374-159, 3374-160; Laws, 1946, ch. 258, §§ 2, 3; Laws, 1950, ch. 491, §§ 159, 160; Laws, 1984, ch. 495, § 15; reenacted and amended, Laws, 1985, ch. 474, § 24; Laws, 1986, ch. 438, § 11; Laws, 1987, ch. 483, § 17; Laws, 1988, ch. 442, § 14; Laws, 1989, ch. 537, § 13; Laws, 1990, ch. 518, § 14; Laws, 1991, ch. 618, § 13; Laws, 1992, ch. 491 § 14, eff from and after passage (approved May 12, 1992).

Cross References — Participation in a comprehensive plan of one or more policies of liability insurance procured and administered by the Department of Finance and Administration, see § 11-46-17.

Expenditures for recreational purposes, see § 21-19-45.

Authority for construction and maintenance of parks, see § 21-37-3.

Section's being liberally construed, see § 21-37-41.

RESEARCH REFERENCES

Am Jur. 7 Am. Jur. Legal Forms 2d, Dedication § 86:32 (dedication of land for park and recreational area).

14 Am. Jur. Legal Forms 2d, Parks, Squares, and Playgrounds §§ 192:69 et seq. (agreement between municipality and nonprofit corporation for development of recreation facility).

18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, Counties, and Other Political Subdivisions, Form 84 (park, restraining construction and establishment).

19 Am. Jur. Pl & Pr Forms (Rev), Parks, Squares, and Playgrounds, Forms 11 et seq. (enforcement of use for park purposes).

8 Am. Jur. Trials 57, Condemnation of Rural Property for Highway Purposes.

11 Am. Jur. Trials 189, Condemnation of Urban Property.

4 Am. Jur. Proof of Facts 257, Dedication.

§ 21-37-39. Park commission; disposition of revenues.

The park commission of any such municipality shall devote all moneys derived by appropriation from the municipal governing authorities, by gift, by revenue, or from any other source, for the payment of all maintenance and operating expenses, the purchase of parks and playground equipment, the repair and replacement thereof, and for the extension of recreational facilities for the wholesome and healthful recreation of all citizens of such municipality.

SOURCES: Codes, 1942, § 3374-162; Laws, 1946, ch. 258, § 5; Laws, 1950, ch. 491, § 162, eff from and after July 1, 1950.

Cross References — Section's being liberally construed, see § 21-37-41.

§ 21-37-41. Park commission; construction of certain laws.

Sections 21-37-33 through 21-37-39 shall be liberally construed to promote the efficient maintenance and operation of such parks, playgrounds, and swimming pools to the end that it may result in the improvement of the general health, entertainment and happiness of the citizens of such municipalities. Such sections shall not be compulsory on any municipality, but the governing authorities of any municipality may come under said sections by adopting an ordinance, duly spread on their minutes determining to do so.

SOURCES: Codes, 1942, § 3374-163; Laws, 1946, ch. 258, § 6; Laws, 1950, ch. 491, § 163, eff from and after July 1, 1950.

§ 21-37-43. Tax levy for parks and playgrounds.

The governing authorities of any municipality, including any municipality operating under a special charter which has created a park commission, are hereby authorized to levy and collect not more than two mills annually for the purpose of constructing, supporting and maintaining parks and playgrounds, and for recreational purposes in such municipalities. The funds so collected by said tax shall be used for no purpose except as provided in this section.

SOURCES: Codes, 1942, § 3374-164; Laws, 1946, ch. 288; Laws, 1948, ch. 388; Laws, 1950, ch. 491, § 164, eff from and after July 1, 1950.

ATTORNEY GENERAL OPINIONS

The levy imposed by Section 21-37-43 is not exempt from the 10% limitation of either Section 27-39-320 or Section 27-39-321. Bordis, Jan. 31, 2003, A.G. Op. #03-0020.

§ 21-37-45. Insuring of municipal property.

The governing authorities of municipalities shall have the power and authority to insure municipal property, including buildings, furniture, books and records, and all other property, against loss by fire and tornado, and to carry such amount of employer's liability, steam boilers, plate glass and other miscellaneous casualty insurance as in the discretion of the governing authorities of the municipality may be deemed proper, and to pay for the premiums thereof out of the municipal treasury.

SOURCES: Codes, 1930, § 2443; 1942, § 3374-151; Laws, 1930, ch. 43; Laws, 1938, ch. 330; Laws, 1950, ch. 491, § 151, eff from and after July 1, 1950.

Cross References — County property being insured, see § 19-7-7.

Purchase of errors and omissions insurance for municipal officials, see § 21-15-6.

Securing the principal and interest on bonds issued in connection with agricultural and industrial board, see § 57-3-21.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 202.

§ 21-37-47. Exercise of eminent domain by municipalities.

The governing authorities of municipalities, and any commission created under legislative act and operating as an agency of any municipality, where necessary or incidental to the functions and purposes of the commission as set out in the legislative act providing for such commission, shall have the power to exercise the right of eminent domain for the following purposes:

1. the laying out of streets, avenues and alleys:
2. the straightening and widening of streets, or changing the grade thereof;
3. the constructing or repairing of sidewalks, sewers, and other improvements;
4. the securing of land for parks, cemeteries, schoolhouses, fire departments, market houses, and for the constructing of any public building;
5. the laying out, constructing, erecting or perfecting of levees, or a system of levees, for the protection of such municipality or any part thereof,

or for the protection of any public work or building, and for the constructing or perfecting of its drainage system;

6. the establishing, altering and changing of the channel of streams or water courses or ditches, and the acquiring of land to bridge the same;

7. and in any other case where the land is to be used for public purposes.

Such governing authorities or commission may exercise the right without, as well as within, the corporate limits of the municipality, and this right may be exercised by any municipality or any such commission aforesaid.

Moreover, any municipality in the state may, in the furtherance of any national defense project, within or without its corporate limits but located within ten miles of the corporate limits of such municipality, purchase or acquire lands connected with such project and in so doing exercise the right of eminent domain, if necessary.

SOURCES: Codes, 1892, § 2946; 1906, § 3337; Hemingway's 1917, § 5834; 1930, § 2413; 1942, §§ 3374-128, 4127; Laws, 1897, ch. 27; Laws, 1916, ch. 224; Laws, 1942, ch. 171; Laws, 1950, ch. 491, § 128; Laws, 1958, ch. 523.

Cross References — Procedures in exercising right of eminent domain, see §§ 11-27-1 et seq.

Appropriation of funds and conveyance of property for schools, see § 21-19-49.

JUDICIAL DECISIONS

1. In general.
2.-5. [Reserved for future use.]
6. Under former law.

1. In general.

Any municipality or any commission created under legislative action that operates as an agency, such as a redevelopment agency, has the power to exercise the right of eminent domain. Jackson Redevelopment Auth. v. King, Inc., 364 So. 2d 1104 (Miss. 1978).

2.-5. [Reserved for future use.]

6. Under former law.

That proceedings in eminent domain were authorized and directed by resolution rather than by ordinance by city operating under legislative charter providing that city may exercise right of eminent domain and that deeds and contracts necessary to be made in writing shall be authorized by resolution of council is immaterial, as distinction between two devices when applied to specific act is one of language only and it is the formal attested action of council expressive of its determination that counts. City of Natchez v. Henderson, 207 Miss. 14, 41 So. 2d 41 (1949).

Trial court having found as fact that public necessity existed for water tower, granting of writ of prohibition restraining eminent domain court from condemning particular site selected by city grounded upon availability of other suitable sites was without authority. City of Natchez v. Henderson, 207 Miss. 14, 41 So. 2d 41 (1949).

A statute in regard to laying out, altering or changing public roads, which was applicable to county highways only, could not be availed of by municipalities to lay out or change public streets. Illinois Cent. R.R. v. State, 94 Miss. 759, 48 So. 561 (1909).

Under Const. 1890 art 3 § 17, a city had no power to lay out a street over a railroad's right-of-way, without condemning a crossing and paying damages therefor, in the manner prescribed by this section, conferring on municipalities power to exercise eminent domain in laying out streets. Illinois Cent. R.R. v. State, 94 Miss. 759, 48 So. 561 (1909).

Const. 1890 § 17, embraces within its inhibition municipalities as well as all other persons, hence a city by lowering an established grade according to which abutting lots have been improved, must compensate the owner for any damage done thereby. City of Jackson v. Williams, 92 Miss. 301, 46 So. 551 (1908).

ATTORNEY GENERAL OPINIONS

The operation of a municipally-owned natural gas pipeline is a "public purpose" as contemplated by subsection (7), and, therefore, a municipality may exercise the right of eminent domain thereunder to acquire rights-of-way necessary for this purpose. Null, April 10, 1998, A.G. Op. #98-0147.

The expenditure of funds by the city of Horn Lake in furtherance of the extension of Nail Road and the construction of an interchange at the intersection with I-55, is permissible using the mechanism of an interlocal cooperation agreement for joint action between the two municipalities involved. Campbell, Oct. 1, 2004, A.G. Op. 04-0469.

RESEARCH REFERENCES

ALR. Amount of property which may be condemned for public school. 71 A.L.R.2d 1071.

Eminent domain: public taking of sports or entertainment franchise or organization as taking for public purpose. 30 A.L.R.4th 1226.

Am Jur. 26 Am. Jur. 2d, Eminent Domain §§ 23, 44-48, 66-75.

7A Am. Jur. Legal Forms 2d, Eminent Domain §§ 97:10 et seq. (acts preliminary to exercise of power of eminent domain).

7A Am. Jur. Legal Forms 2d, Eminent Domain § 97:33 (claim for compensation following condemnation creating easement).

13C Am. Jur. Legal Forms 2d, Municipal Corporations, Counties and Other Political Subdivisions § 180:88.

4 Am. Jur. Proof of Facts 649, Eminent Domain.

8 Am. Jur. Trials 57, Condemnation of Rural Property for Highway Purposes, §§ 1 et seq.

11 Am. Jur. Trials 189, Condemnation of Urban Property, §§ 1 et seq.

CJS. 29A C.J.S., Eminent Domain §§ 23-29, 27-50.

§ 21-37-49. Purchase of lands sold to state.

The mayor and board of aldermen, or other governing authorities, of any municipality in this state are hereby authorized to purchase from the state any lands situated within the corporate limits of such municipality which have been sold to the state for delinquent taxes and the title to which, at the time of the filing of the application to purchase, has matured in the state. The land commissioner, with the approval of the governor, may sell any such lands situated within the corporate limits of such municipality to the municipality at such price as may be authorized by law for the sale of such lands to individuals. Such sale may be made upon the same terms and conditions as are provided by law for the sale of lands to individuals. The mayor and board of aldermen, or other governing authorities, of such municipality are hereby authorized to appropriate money out of the general fund of such municipality for the payment of the purchase price of such lands.

SOURCES: Codes, 1942, § 4086; Laws, 1936, ch. 174.

Editor's Note — Pursuant to Section 7-11-4, effective January 1, 1980, the words "state land commissioner", "land commissioner", "state land office" and "land office" shall mean the secretary of state.

Cross References — Municipalities acquiring lands at tax sales, see §§ 21-33-69, 21-33-73.

§ 21-37-51. Surveys and maps.

The governing authorities of municipalities shall have the power to have a survey and map made of the streets, blocks and lots. When corrected and approved by such municipal authorities, the map so made shall constitute the official map of the municipality, and a duplicate thereof shall be recorded in the office of the chancery clerk of the county, in the manner prescribed by law.

SOURCES: Codes, 1906, § 3349; Hemingway's 1917, § 5846; 1930, § 2425; 1942, § 3374-138; Laws, 1898, ch. 42; Laws, 1950, ch. 491, § 138, eff from and after July 1, 1950.

Cross References — Maps of subdivisions, see §§ 17-1-23, 21-19-63.
Accepting subdivision street before subdivision completed, see § 17-1-25.
Making, contents, and recording of town plats, see §§ 19-27-21 et seq.

RESEARCH REFERENCES

Am Jur. 3B Am. Jur. Legal Forms 2d, Boundaries §§ 44:11 et seq. (boundary descriptions, principles).

7 Am. Jur. Proof of Facts, Maps, Diagrams, and Models.

§ 21-37-53. Disposal of certain property not purchased with public funds by certain municipalities.

Any municipality which holds title to property, real, personal, or mixed, which was not purchased with public funds, and which is not used for governmental purposes, but is occupied and used by an industry engaged in manufacturing, may contract privately with the occupant thereof with regard thereto, and may convey and dispose of the same at private sale to such person, firm or corporation so occupying and using the same at and for such consideration as the governing authorities may deem proper under the circumstances.

Any municipality which holds title to property, real, personal, or mixed, which was not purchased with public funds and which is not used for governmental purposes, is hereby authorized to lease same at and for such consideration as the governing authorities may deem proper for a period or periods not to exceed seventy-five years, and may contract with private individuals, firms, or corporations with respect to the use and development thereof.

Any municipality of this state, in or near which a state university, or other state supported four-year college, is now or may hereafter be located, which owns a museum, the property on which it is situated, and/or other property, all of which was acquired by donation or without the use of public funds, may, in the discretion of its governing authorities, convey by gift or otherwise such museum and such property, or any part of it, to such state university, or other state supported four-year college, located in or near such municipality.

SOURCES: Codes, 1892, § 2923; 1906, § 3314; Hemingway's 1917, § 5811; 1930, § 2391; 1942, § 3374-112; Laws, 1950, ch. 491, § 112; Laws, 1957, Ex. Sess., ch. 13, § 4; Laws, 1960, ch. 425; Laws, 1966, ch. 592, § 1, eff from and after passage (approved June 15, 1966).

Cross References — Statutes of limitation being in favor of state, and when running commences against plaintiff, see § 15-1-51.

Municipality donating land to the United States for veterans' hospital or soliders' home, see § 35-3-1.

Municipality providing quarters for veterans' organizations, see § 35-3-5.

Powers of municipality under urban renewal law, see § 43-35-15.

Sale or development of airport lands or other lands for industrial purposes, see §§ 57-7-1 through 57-7-13.

Conditions under which quitclaim deed may be issued by municipality, see § 89-1-25.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.
7. —Property rights.
8. —Contracts.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

The governing body of a municipality possesses only such authority as is conferred upon it by its charter or by general statutes, together with such powers as are necessary to give effect to the powers granted. Mayor & Bd. of Aldermen v. Engle, 211 Miss. 380, 51 So. 2d 564 (1951).

A city can do and perform all acts for which it has authority under its charter from the State from which it derives its existence, except such as may be in conflict with the Constitution. City of Indianola v. Sunflower County, 209 Miss. 116, 46 So. 2d 81 (1950).

Powers delegated by the Legislature to municipalities are intended to be exercised in conformity to, and consistent with the general laws of the State, and are to be construed most strongly against a power or right claimed but not clearly given. King v. City of Louisville, 207 Miss. 612, 42 So. 2d 813 (1949).

Municipal powers are only those expressly conferred by statute, and neccessarily implied. Such powers belong to the municipality and not to its officers. Tullos v. Town of Magee, 181 Miss. 288, 179 So. 557 (1938).

Municipalities can exercise no powers except such as are delegated to them by the state expressly or by necessary implication. Steitenroth v. City of Jackson, 99 Miss. 354, 54 So. 955 (1911).

A municipality operating under the code chapter on municipalities is restricted in its powers to those conferred by said chapter. City of Hazlehurst v. Mayes, 96 Miss. 656, 51 So. 890 (1910).

A municipality cannot be allowed to exercise powers not clearly given it by its charter. Crittenden v. Town of Booneville, 92 Miss. 277, 45 So. 723, 131 Am. St. R. 518 (1908).

7. —Property rights.

Former section gave the broad power to a municipality to purchase and hold real estate and personal property; under such a broad power, it is a general rule of interpretation that there is embraced and included the lesser power to lease, unless there is in the very nature of the use and control of the property an implied inhibition against a lease. Accordingly, a municipality was held liable for the reasonable use of a fire engine where the contract of sale thereof was invalid for failure to follow statutory requirements. American-LaFrance, Inc. v. City of Phila., 183 Miss. 207, 184 So. 620 (1938).

8. —Contracts.

Where a purported lease contract giving to a college an option to purchase the leased property was ultra vires in that the special act under which the municipal authorities acted did not authorize the giving of an option, the option provision could not be upheld under the authority of this section. Whitworth College, Inc. v. City of Brookhaven, 161 F. Supp. 775 (S.D. Miss. 1958), aff'd, 261 F.2d 868 (5th Cir. 1958).

The power of a municipality to contract with reference to any subject matter must either be expressly covered by its charter or by general statute, or necessarily implied therefrom. Mayor & Bd. of Aldermen v. Engle, 211 Miss. 380, 51 So. 2d 564 (1951).

Individuals dealing with a municipality are required to take notice of its charter limitations. Edwards Hotel & City R. Co. v. City of Jackson, 96 Miss. 547, 51 So. 802 (1910).

ATTORNEY GENERAL OPINIONS

Municipal governing authorities must follow the procedures set forth in § 21-17-1 to lease surplus real property which was donated to the municipality. Campbell, November 6, 1998, A.G. Op. #98-0659.

RESEARCH REFERENCES

ALR. Municipal establishment or operation of off-street public parking facilities. 8 A.L.R.2d 373.

Granting or taking of lease of property by municipality as within authorization of purchase or acquisition thereof. 11 A.L.R.2d 168.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 189 et seq., 525.

13C Am. Jur. Legal Forms 2d, Municipal Corporations, Counties, and Other Political Subdivision § 180:62 (ordinance approving lease of city property); §§ 180:128-180:130 (resolutions with respect to sale of county prop).

§ 21-37-55. Conveyance of land in slum, blighted or urban renewal areas to urban renewal agencies by certain municipalities.

(1) A municipality with a population of one hundred thousand (100,000) or more according to the latest federal decennial census, may convey to its urban renewal agency, for a nominal price, land in a slum area, blighted area or urban renewal area to which it holds title.

(2) As used in this section:

(a) "Urban renewal agency" means an urban renewal agency created under Section 43-35-33.

(b) "Slum area," "blighted area" and "urban renewal area" have the meaning ascribed to such terms in Section 43-35-3.

SOURCES: Laws, 2011, ch. 324, § 1, eff from and after July 1, 2011.

CHAPTER 38

Acquisition or Lease of Real Property from Federal Government for Parks, Recreation, and Tourism

Sec.
21-38-1. Purpose.
21-38-3. Definitions.
21-38-5. Municipality authorized to enter into agreement, contract, or lease with United States.
21-38-7. Incorporation of property located outside corporate boundaries.
21-38-9. Required provisions in ordinance of incorporation.
21-38-11. Appeal by aggrieved persons.
21-38-13. Certified copy of ordinance of incorporation to be forwarded to Secretary of State.
21-38-15. Recordation of map or plat of boundaries.

§ 21-38-1. Purpose.

The purpose of this chapter is to promote the general welfare and economic development by empowering certain municipalities to (a) acquire or lease real property, whether located within or outside the corporate boundaries of such municipality, from the United States, (b) develop and use such real property, and (c) incorporate such real property. The provisions of this chapter are and shall be construed to be independent of, an alternative to and in addition to all existing laws of the state governing the authority of municipalities.

SOURCES: Laws, 1999, ch. 308, § 1, eff from and after passage (approved Mar. 8, 1999.)

§ 21-38-3. Definitions.

As used in this chapter, the following words shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) “Municipality” means any municipality located in a county in which Sardis Lake is located, in which Mississippi Highway 6 and Interstate Highway 55 intersect and having a population of five thousand (5,000) or less according to the 1990 federal decennial census.

(b) “Sardis Lake” means that certain flood control reservoir and adjacent real property in Lafayette and Panola Counties owned by the United States and operated and managed by the Department of the Army through its Corps of Engineers on March 8, 1999.

(c) The “United States” means the United States Government and the United States Department of the Army, acting by and through its Corps of Engineers, and any other agency, department or commission of the United States owning or having jurisdiction or authority, or both, over Sardis Lake or matters relating thereto.

SOURCES: Laws, 1999, ch. 308, § 2, eff from and after passage (approved Mar. 8, 1999.)

§ 21-38-5. Municipality authorized to enter into agreement, contract, or lease with United States.

(1) Any municipality may enter into and accomplish any agreement, contract, lease or other arrangement with the United States whereby the municipality may acquire or lease real property, whether located within or outside the corporate boundaries of such municipality, for the purpose of developing and promoting parks, tourism and recreational facilities of all types, including without limitation marinas, restaurants, hotels, conference centers, golf courses, lakes, nature trails, campgrounds and similar facilities and supporting infrastructure; and the purposes set forth in any such agreement, contract, lease or other arrangement and the uses described therein of such real property shall be proper municipal purposes for such municipality.

(2) Any municipality that acquires or leases real property from the United States under subsection (1) of this section may (a) lease and sublease, and grant rights to use, easements and rights-of-way over and across, any part or all of such real property for such consideration and upon such terms and conditions as the municipality may deem appropriate for a period or periods not to exceed seventy-five (75) years, and (b) enter into and accomplish agreements, contracts, leases and subleases, and other arrangements with private individuals, firms or corporations with respect to the use and development of such real property.

(3) Any municipality that leases or subleases or grants rights to use, easements or rights-of-way over and across real property acquired or leased from the United States under subsection (1) of this section may utilize all revenues received from the rental or use of such real property or the granting of such rights, or received as a result of any term or condition in an agreement, contract, lease, sublease or other arrangement relating to such real property, for all proper municipal purposes.

SOURCES: Laws, 1999, ch. 308, § 3, eff from and after passage (approved Mar. 8, 1999.)

§ 21-38-7. Incorporation of property located outside corporate boundaries.

Any municipality that acquires or leases real property from the United States under this chapter, if such real property is located outside the corporate boundaries of such municipality, may incorporate such real property into its corporate boundaries by ordinance adopted for such purpose if such real property is located within the same county as the municipality, regardless of whether the real property is adjacent or contiguous to the existing corporate boundaries of such municipality.

SOURCES: Laws, 1999, ch. 308, § 4, eff from and after passage (approved Mar. 8, 1999.)

§ 21-38-9. Required provisions in ordinance of incorporation.

Any ordinance to incorporate real property into the corporate boundaries of a municipality under this chapter shall include the following provisions and shall be effective as follows:

(a) The ordinance shall accurately describe the metes and bounds of the real property to be incorporated, and only real property acquired or leased from the United States under this chapter shall be subject to such incorporation.

(b) If the United States retains ownership of the real property to be incorporated by the municipality, the United States must consent to the incorporation and a written statement of such consent must be cited and included in the ordinance.

(c) The ordinance shall provide that it will not become effective until publication thereof shall have been made once each week for three (3) consecutive weeks in a newspaper, or newspapers, published or having a general circulation in the county in which the municipality and the real property to be incorporated are located.

(d) Subject only to the limitations of this chapter, the ordinance shall become effective upon the effective date fixed therein.

SOURCES: Laws, 1999, ch. 308, § 5, eff from and after passage (approved Mar. 8, 1999.)

§ 21-38-11. Appeal by aggrieved persons.

Any person aggrieved by a municipal ordinance adopted under this chapter may appeal to the circuit court of the county in which the principal office of the municipality is located in the manner provided for appeals of judgments or decisions of municipal authorities as set forth in Section 11-51-75, Mississippi Code of 1972.

SOURCES: Laws, 1999, ch. 308, § 6, eff from and after passage (approved Mar. 8, 1999.)

§ 21-38-13. Certified copy of ordinance of incorporation to be forwarded to Secretary of State.

Whenever the corporate boundaries of a municipality shall be enlarged under this chapter, the municipality shall, within thirty (30) days after the effective date of such ordinance, if no appeal is taken therefrom, forward to the Secretary of State a certified copy of such ordinance, which shall be filed in the Office of the Secretary of State and shall remain a permanent record thereof. If an appeal is taken from such ordinance and the ordinance is affirmed, then the certified copy thereof shall be forwarded to the Secretary of State within ten (10) days after receipt of the mandate from the court notifying the municipality of such affirmance.

SOURCES: Laws, 1999, ch. 308, § 7, eff from and after passage (approved Mar. 8, 1999.)

§ 21-38-15. Recordation of map or plat of boundaries.

Whenever the corporate boundaries of a municipality shall be enlarged under this chapter, the municipality shall furnish to the chancery clerk of the county in which the municipality is located a map or plat of the boundaries of the municipality as altered. The map or plat shall be recorded in the official plat book of the county.

SOURCES: Laws, 1999, ch. 308, § 8, eff from and after passage (approved Mar. 8, 1999.)

CHAPTER 39

Contracts and Claims

Sec.	
21-39-1.	Repealed.
21-39-3.	Letting of contracts for publication of proceedings, ordinances, etc.
21-39-5.	Records and payment of claims in all municipalities.
21-39-7.	Docket of claims in municipalities having a population of more than two thousand.
21-39-9.	Disposition of claims.
21-39-11.	Appeals.
21-39-13.	Issuance of warrants or checks; assignment thereof.
21-39-15.	Penalty for unauthorized claim or appropriation.
21-39-17.	Penalty for wrongfully issuing, signing or attesting warrant.
21-39-19.	Duties of depository or treasurer.
21-39-21.	Disposition of lost, stolen, abandoned or misplaced personal property.
21-39-23.	Applicability of particular sections.
21-39-25.	Repealed.
21-39-27.	Municipalities authorized to obtain credit cards for official travel by members of governing authority and municipal employees.

§ 21-39-1. Repealed.

Repealed by Laws, 1983, ch. 469, § 10, eff from and after July 1, 1983.

[Codes, 1906, § 3446; Hemingway's 1917, §§ 6006, 6060; 1930, §§ 2616, 2648; 1942, §§ 3374-83, 3374-107; Laws, 1912, ch. 120; 1922, ch. 222; 1950, ch. 491, §§ 83, 107]

Editor's Note — Former § 21-39-1 made it unlawful for municipal officers and employees to have an interest in any contracts entered into with the municipality.

§ 21-39-3. Letting of contracts for publication of proceedings, ordinances, etc.

In municipalities in which there is more than one newspaper qualified to publish legal notices, the governing authorities of such municipality shall enter into a contract for the publication of its proceedings, ordinances, resolutions, and other notices required to be published only after inviting competitive bids from such newspapers. Such contracts shall be let to the lowest bidder among them for a period of not more than twelve months from the date of such contract. It shall not be necessary, however, that the governing authorities of such municipality advertise its intention to accept such competitive bids but it shall be sufficient if notice thereof in writing be given to all of such newspapers by mail or delivery at least five days prior to the date on which said bids will be received, which said notice shall specify the date on which such bids will be received.

SOURCES: Codes, 1942, § 3374-111.5; Laws, 1950, ch. 519, eff from and after July 1, 1950.

Cross References — Ordinance's effective date, revision and publication, see §§ 21-13-11, 21-13-15.

Applicability of this section, see § 21-39-23.

Invalidity of "hold harmless" clauses in public and private construction contracts, see § 31-5-41.

JUDICIAL DECISIONS

1. In general.

City Board of Aldermen (Board) invited and accepted bids from both the publisher and the newspaper as required, and both parties agreed that the newspaper submitted the lower bid; pursuant to the language of Miss. Code Ann. § 21-39-3, the Board was required to award the contract to publish legal notices to the lowest bidder, and thus, the Board acted in accordance with the statute. Stone County Publ., Inc. v. Prout, 18 So. 3d 300 (Miss. Ct. App. 2009).

Municipal authorities cannot let a contract to publish legal notices to a newspaper not qualified under § 13-3-31, regardless of whether or not it is the lowest bidder; thus a city council's order dividing the publication of its legal notices equally among three newspapers was null and void where it was subsequently determined that one of the newspapers was not legally qualified; a subsequent order of the council awarding the contract to the other two newspapers was not arbitrary, capricious, discriminatory, illegal or without substantial basis and the circuit court thus erred in setting it aside. City of Jackson v. Capital Reporter Publishing Co., 373 So. 2d 802 (Miss. 1979).

ATTORNEY GENERAL OPINIONS

Municipal governing authorities may require newspapers submitting bids for the municipality's publishing contract to provide evidence of compliance with Section 13-3-31. Taylor, Oct. 27, 2006, A.G. Op. 06-0530.

RESEARCH REFERENCES

ALR. Authority of state, municipality, or other governmental entity to accept late bids for public works contracts. 49 A.L.R.5th 747.

Am Jur. 1 Am. Jur. Legal Forms 2d, Advertising §§ 12:10, 12:12, 12:14-12:16 (advertising contract, general forms).

18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, Counties, and Other Political Subdivisions, Form 71 (illegal contract, payment quantum meruit).

18A Am. Jur. Pl & Pr Forms (Rev), Notice, Form 1 (notice, general form).

§ 21-39-5. Records and payment of claims in all municipalities.

The clerk of the municipality shall open and keep a regular set of records, as prescribed by the State Auditor, as the head of the State Department of Audit, or the director thereof, appointed by him, as designated and defined in Title 7, Chapter 7, of the Mississippi Code of 1972, or any office or officers hereafter designated to replace or perform the duties imposed by said chapter, subject always to inspection within office hours by any citizen desiring to inspect the same. Said records shall contain accounts, under headings, corresponding with the several headings of the budget, so that the expenditures under each head may be at once known. Such records shall be paid for out of the general municipal fund, upon the order of the proper municipal authorities. Said clerk shall also mark filed, as of the date of presentation of same, each and every claim against said municipality. He shall number the same in regular consecutive order, shall file and keep the same in like manner, and shall safely preserve the same as records of his office.

Each year's records shall be kept separate and begin with a new number each year, and run in regular order.

In issuing any warrant under order of the governing authorities of the municipality to pay any one of said claims so numbered and kept, said clerk shall enter the number of the claim in the body of the warrant so that the claim may be easily found, and so that possible duplication may be avoided. The governing authorities of the municipality shall designate on each allowance of a claim against the municipality the fund out of which same shall be paid, and to what account the sums shall be charged in said records. Each allowance shall have the number of the claim noted in the minutes of said governing authorities.

For failure to perform any duty herein required, said clerk shall be subject to suit on his bond for any damage which the municipality may sustain by reason of such failure. Such suit, or suits, shall be brought by the city attorney or by any attorney designated and empowered to do so by the proper governing authorities of such municipality.

SOURCES: Codes, 1930, § 3972; 1942, § 9121-05; Laws, 1922, ch. 225; Laws, 1950, ch. 497, § 5; Laws, 1995, ch. 447, § 13, eff from and after July 1, 1995.

Editor's Note — Section 7-7-2, as added by Laws of 1984, chapter 488, § 90, and amended by Laws of 1985, chapter 455, § 14, Laws of 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts", "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts", "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — County books of accounts being kept by the clerk of the board of supervisors, see § 19-11-13.

Docketing and disposition of claims, see §§ 21-39-7, 21-39-9.

Issuance of warrants for claims, see § 21-39-13.

JUDICIAL DECISIONS

1. In general.

Where a determinative vote on a resolution, directing the dismissal of the city's suit to recover losses resulting from budget excesses, illegal expenditures and failure to keep proper records by officials of the city, was cast by one of the officials sued, the resolution was void, not only as to the voting city official but as to the other defendant as well. Friedhof v. City of Biloxi, 232 Miss. 20, 97 So. 2d 742 (1957).

ATTORNEY GENERAL OPINIONS

The governing authorities of a town may, in their discretion, establish procedures for collection of mail to ensure that safeguards exist which will assist the municipal clerk in the carrying out of her functions; the board may also authorize who can and who cannot pick up and open the mail. Freeman and Daily, Mar. 15, 2002, A.G. Op. #02-0078.

A governing authority may define which expenses are reimbursable travel expenses, consistent with the rules and regulations of the Department of Finance and Administration. Reimbursement of travel expenses may only be made for travel authorized by a governing authority in minutes or by resolution or ordnance, and must be included in the annual budget. A governing authority can authorize a department head to approve travel it has budgeted. Only the administrative head of a municipal department may authorize travel advances. Campbell, March 23, 2007, A.G. Op. #07-00135, 2007 Miss. AG LEXIS 120.

RESEARCH REFERENCES

ALR. Modern status of the law as to validity of statutes or ordinances requiring notice of tort claim against local governmental entity. 59 A.L.R.3d 93.

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 661 et seq.

CJS. 64 C.J.S., Municipal Corporations §§ 2519, 2520 et seq.

§ 21-39-7. Docket of claims in municipalities having a population of more than two thousand.

In all municipalities having a population of more than two thousand (2,000), according to the latest federal census, and in other municipalities where the governing authorities should so elect, it shall be the duty of the clerk of the municipality to keep as a record in his office a record to be styled "Docket of Claims," in which he shall enter all demands, claims and accounts against the municipality presented to him during the month. Said docket shall provide space for the name of the claimant, the number of the claim, the amount of the claim, and on what account. All demands, claims and accounts allowed against the municipality shall be preserved by the clerk as a permanent record, and shall be numbered in such a manner as to relate to the warrants to be issued therefor, and the said warrant issued in payment of such claim shall carry on its face a reference to the number of the claim for which the said warrant is issued in payment. No order for the payment or expenditures of any funds of such municipality in payment of any indebtedness thereof shall be made in municipalities having a claim docket unless such claim is filed as herein provided. However, this provision shall not be applicable to the salaries or other compensation of officers or employees of such municipality where the amount of such salary or other compensation shall have been previously fixed by the governing authorities of the municipality in its approval of the payroll or payrolls on which the same appears, and in case of such allowance, it will be sufficient to enter on the claims docket the total of such payroll, followed by reference to the said payroll upon which such allowance may be found.

SOURCES: Codes, 1892, § 2995; 1906, § 3392; Hemingway's 1917, § 5920; 1930, § 2529; 1942, § 3374-86; Laws, 1950, ch. 491, § 86; Laws, 1985, ch. 519, § 7; Laws, 1995, ch. 447, § 14, eff from and after July 1, 1995.

Cross References — Foregoing being a portion of the clerk's duties under council form of government, see § 21-7-15.

Other duties of the clerk concerning dockets, books and records, see § 21-15-19.

Requirement that municipality's books of accounts include claims, see § 21-39-5.

Applicability of certain claims' sections to particular municipalities, see § 21-39-23.

Relationship between this section and certain general provisions relative to timely payment of invoices for goods and services sold to public bodies, see § 31-7-305.

ATTORNEY GENERAL OPINIONS

If payment for services was not previously authorized by a city board of aldermen by a contract approved on its minutes, then the board has no authority to pay a claim for such services and therefore must disallow the claim. Belk, July 2, 1999, A.G. Op. #99-0297.

A mayor does not have authority to transfer funds from one account, such as the park account, to the general funds or another account without prior approval by the board of aldermen. Willis, Mar. 8, 2002, A.G. Op. #02-0055.

The police chief may spend funds appropriated by the board within the budget for the police department, but the board of aldermen must approve payment for claims on the claims docket to vendors for equipment, vehicles, commodities, or services provided to the police department. Davis, July 19, 2002, A.G. Op. #02-0396.

RESEARCH REFERENCES

ALR. Limitation period as affected by requirement of notice or presentation of claim against governmental body. 3 A.L.R.2d 711.

Local government tort liability: minority as affecting notice of claim requirement. 58 A.L.R.4th 402.

Am Jur. 18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, Counties, and Other Political Subdivisions, Forms 131 et seq. (claims, notice and presentation).

18 Am. Jur. Pl & Pr Forms (Rev), Municipal, School, and State Tort Liability, Forms 1 et seq. (notice and filing of claim).

18 Am. Jur. Pl & Pr Forms (Rev), Municipal, School, and State Tort Liability, Forms 31 et seq. (claims, amending and late filing).

§ 21-39-9. Disposition of claims.

At each regular meeting of the governing authorities of the municipality the claims docket shall be called and all claims then on file not previously paid shall be paid by the governing authorities in the order in which they were entered on the docket.

The processing of claims by the governing authority of the municipality shall be subject to the provisions of Sections 31-7-301, 31-7-305, 31-7-309, 31-7-311 and 31-7-313.

SOURCES: Codes, 1942, § 3374-87; Laws, 1950, ch. 491, § 87; Laws, 1986, ch. 489, § 11, eff from and after passage (approved April 15, 1986).

Cross References — Emergency expenditures, see § 21-35-19.

Clerk's duty to record each claim presented, see § 21-39-5.

Penalties for wrongfully paying claims, see § 21-39-17.

Definition and compromise of doubtful claims, see §§ 31-19-27, 31-19-29.

JUDICIAL DECISIONS

1. In general.

"Claims docket" method of handling municipal expenditures-appropriate department must bring properly docketed claim, before council for approval-is statutorily required although facially incompatible with statutory mayor-council form of government. Jordan v. Smith, 669 So. 2d 752 (Miss. 1996).

ATTORNEY GENERAL OPINIONS

"Governing authorities" of municipality under Mayor-Council form of government consists of mayor and city council; payment of claims is joint responsibility of mayor and council members. Bucklew, March 7, 1990, A.G. Op. #90-0157.

Governing authority of municipality may consider and pay lawful insurance claims including deductibles; however, municipality may not establish account of appropriated funds from which third party administrator will pay claims under contract of insurance. Mitchell, July 8, 1992, A.G. Op. #92-0276.

With regard to the privatization of maintenance and operation of municipal water and sewer systems, the governing authorities do not have authority to establish a reserve fund to pay for materials used by the contractor for maintenance and repairs to the systems and other expenditures as may be mutually agreed between the parties; the governing authorities may establish a reserve fund for expenses of the water system or other expenses, but only the governing authorities are authorized to make expenditures from the fund. Snyder, Nov. 27, 2000, A.G. Op. #2000-0673.

The police chief may spend funds appropriated by the board within the budget for the police department, but the board of aldermen must approve payment for claims on the claims docket to vendors for equipment, vehicles, commodities, or services provided to the police department. Davis, July 19, 2002, A.G. Op. #02-0396.

RESEARCH REFERENCES

ALR. Power of city, town, or county or their officials to compromise claim. 15 A.L.R.2d 1359.

Am Jur. 18 Am. Jur. Pl & Pr Forms (Rev), Municipal Corporations, Counties, and Other Political Subdivisions, Forms 141 et seq. (compromise or settlement of claims).

18 Am. Jur. Pl & Pr Forms (Rev), Municipal, School and State Tort Liability,

Forms 81 et seq. (tort liability, construction, maintenance or use of public property).

§ 21-39-11. Appeals.

Any person aggrieved by any order of the governing authorities of any municipality, with reference to the order in which claims are allowed and paid, shall have the right of appeal to the circuit court of the county in which the municipality is situated as provided by Section 11-51-75, except that an appeal from an order, or any other action of the governing authorities of the municipality, especially preferring payment of one allowed claim over another allowed claim shall operate as a supersedeas and prevent the payment of the claim then allowed until the matter is finally determined on the appeal.

SOURCES: Codes, 1942, § 3374-87; Laws, 1950, ch. 491, § 87, eff from and after July 1, 1950.

Cross References — Emergency expenditures in settlement of lawful claims, see § 21-35-19.

Clerk's duty to record each claim presented, see § 21-39-5.

Definition and compromise of doubtful claims, see §§ 31-19-27, 31-19-29.

§ 21-39-13. Issuance of warrants or checks; assignment thereof.

(1)(a) The clerk of the municipality shall draw all warrants or checks for claims and accounts allowed and approved by the governing authorities. Except as provided in subsections (b) and (c), the warrants or checks shall be signed by the mayor or a majority of the members of the board of aldermen in any municipality operating under a mayor-alderman form of government, and attested by the clerk, and to which there shall be affixed the seal of the municipality. The governing authorities of any municipality may adopt the use of a standard check signing machine to be used in lieu of the manual signing of warrants or checks under such terms and conditions as the governing authorities shall deem meet and proper for the protection of the interest of the municipality.

(b) A municipality may authorize a municipally owned utility to make early payments to its electricity suppliers for the purpose of receiving early payment discounts from such distributors.

(c) The governing authorities of a municipality may authorize the clerk of the municipality to issue a warrant or check for the purpose of immediately refunding to a customer of the municipally owned utility his or her deposit for municipal utility services after the municipal utility has determined that payment for all services and any other obligations which the customer may have incurred in regard to the municipal utility has been made.

(2) Every warrant or check drawn on the treasury shall express on its face to whom issued and for what purpose allowed, and the ordinance authorizing its issuance shall be cited, by minute book and page, in or upon it.

(3) All such warrants or checks shall be drawn against the proper fund in the municipality from which such allowed claims shall be paid, and all such warrants or checks shall be drawn in the order of their allowance. No warrant or check shall be signed, removed from the warrant book or checkbook or delivered by the clerk until there is sufficient money in the fund upon which it is drawn to pay the same and all prior unpaid warrants or checks drawn upon that fund, whether delivered or not.

(4) The owner of any claim against a municipality, either before or after allowance, may transfer same by assignment, and the holder of such assignment shall be entitled to receive the warrant or check therefor at the proper time by presenting such assignment to the clerk at any time before the delivery of the warrant or check to the original claimant.

SOURCES: Codes, 1892, §§ 2981, 3003, 3004; 1906, §§ 3379, 3401, 3402; Hemingway's 1917, §§ 5907, 5931, 5932; 1930, §§ 2515, 2539, 2540; 1942, §§ 3374-88, 3374-89; Laws, 1950, ch. 491, §§ 88, 89; Laws, 1980, ch. 308; Laws, 1992, ch. 358, § 1; Laws, 1999, ch. 347, § 1, eff from and after July 1, 1999.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the second paragraph of subsection (1). The Joint Committee added a paragraph identifier "(b)" to that paragraph. The Joint Committee ratified the correction at its May 20, 1998 meeting.

Cross References — How monies are appropriated for municipality's operations, see § 21-13-3.

Municipal authorities appropriating funds for municipal expenses, see § 21-17-7.

General powers of municipality as to creation, maintenance, and operation of public utility systems, see § 21-27-23.

Requirement that municipality keep books of accounts, see § 21-35-11.

Warrants not to be issued in excess of budget estimates, and personal liability of municipal officials, see § 21-35-17.

Emergency warrants, see § 21-35-21.

Penalty for unauthorized appropriations, see § 21-39-15.

Replacement of bond or warrant, lost, destroyed or mutilated, see §§ 25-55-19 et seq.

Relationship between this section and certain general provisions relative to timely payment of invoices for goods and services sold to public bodies, see § 31-7-305.

Salaries of school officials being paid by certificates and warrants, see § 37-9-41.

What constitutes forgery in connection with municipal warrants, see § 97-21-61.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

The requirement of this section that the mayor should sign all warrants on the city treasury, other than those provided for in § 6287, Code of 1942, which permits the clerk of a municipality, if a separate school district, to issue a warrant in payment for the services of a teacher, was intended as a checkrein on the expenditure of funds for any municipal purpose, and to the end that the taxpayers should have the benefit of his judgment and discretion in determining whether the warrant is drawn on the proper fund and for a purpose authorized by law. Williams v. State ex rel. Att'y Gen., 209 Miss. 251, 46 So. 2d 591 (1950).

The only exception to this statute requiring the mayor to sign all warrants drawn on the city treasury for money is that contained in § 6287, Code of 1942, which permits the clerk of a municipality, if a separate school district, to issue a warrant in payment for the services of a teacher. Williams v. State ex rel. Att'y Gen., 209 Miss. 251, 46 So. 2d 591 (1950).

Mayor could not be compelled to execute and deliver a warrant, upon requisition by board of trustees, on maintenance fund in municipal separate school district for the payment of an installment due on building contract for the construction of a gymnasium and vocational training building instead of against a bond and building fund containing ample funds for that purpose. Williams v. State ex rel. Att'y Gen., 209 Miss. 251, 46 So. 2d 591 (1950).

A court having jurisdiction may require a municipality to issue a warrant in payment of a judgment against the municipality and it may direct that the warrant be filed with the treasurer and have priority over other debts payable out of the general funds of the town. Town of Jonestown v. Ganong, 97 Miss. 67, 52 So. 579 (1910), error overruled 97 Miss. 67, 52 So. 692.

Deposit of money forfeited to the city by breach of the depositors' contract became the money of the city which it could part with only by specific appropriation made by order of its mayor and board of aldermen. Jackson Elec. Ry. & L. Power Co. v. Adams, 79 Miss. 408, 30 So. 694 (1901).

ATTORNEY GENERAL OPINIONS

The statute applies to Mayor-Council forms of government and requires that all warrants or checks issued by a municipality be attested by the city clerk; the city clerk's signature should appear on all warrants or checks issued by the municipality, whether in payment of accounts payable or payroll, attesting the validity and genuineness of the document; the use of a check signing machine is in lieu of the above procedure, and if a city has adopted the usage of a check signing machine, the city may forego the attestation by the clerk if it deems same "meet and proper for the protection of the interest of the municipality." Peterson, Nov. 30, 2001, A.G. Op. #01-0688.

Either the mayor or a majority of the board of aldermen (three out of a five member board) may sign warrants of the municipality; in either case, the warrants must be attested by the municipal clerk. Freeman and Daily, Mar. 15, 2002, A.G. Op. #02-0078.

Where a claim is made for services perfomed for a municipality by a someone other than the original contractor, and it is not a situation in which the original contractor transferred the claim by assignment to the third party for collection only, the board of aldermen has no authority to pay the claim to the third party and it must be disallowed. Brown, July 25, 2003, A.G. Op. 03-0365.

The governing authorities of a town may agree to the assignment of a contract for cemetery maintenance to the wife of the current caretaker by order in the minutes, and the caretaker may perform the services of maintenance of the cemetery pursuant to the contract which his wife holds with the town. Davis, July 25, 2003, A.G. Op. 03-0375.

§ 21-39-15. Penalty for unauthorized claim or appropriation.

If any member of the governing body of a municipality shall knowingly vote for the payment of any claim not authorized by law, he shall be subject to indictment and, upon conviction, be fined by a sum not exceeding double the amount of such unlawful claim or appropriation, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment.

SOURCES: Codes, 1906, § 3431; Hemingway's 1917, § 5991; 1930, § 2593; 1942, § 3374-84; Laws, 1950, ch. 491, § 84, eff from and after July 1, 1950.

Cross References — Comparable provision for counties, see § 19-13-35.

Personal liability of municipal officer approving claim in excess of budget appropriation, see § 21-35-17.

Penalty for wrongfully issuing, signing or attesting to warrant, see § 21-39-17.

Penalty for violating statutes concerning public purchases, see § 31-7-55.

Penalties for violations of provisions concerning public debts, see § 31-19-3.

Penalty for municipal officers failing to perform their duty, see § 97-11-37.

ATTORNEY GENERAL OPINIONS

If payment for services was not previously authorized by a city board of aldermen by a contract approved on its minutes, then the board has no authority to pay a claim for such services and therefore must disallow the claim. Belk, July 2, 1999, A.G. Op. #99-0297.

§ 21-39-17. Penalty for wrongfully issuing, signing or attesting warrant.

All expenditures of money from the treasury of any municipality for any purpose whatsoever shall be in pursuance of the allowance of a claim as hereinbefore specified in Section 21-39-9, or in pursuance of a specific appropriation made by order, which such appropriation shall be specific as to each separate expenditure in so far as may be practical. If the mayor, clerk, or any other person shall wilfully or feloniously issue, sign or attest any warrant for the expenditure of money from the municipal treasury when such expenditure is not authorized by an order entered on the minutes of such municipality, then such person shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment, in the discretion of the court. In addition such person shall, upon conviction, automatically be removed from his office.

SOURCES: Codes, 1892, §§ 3003, 3004; 1906, §§ 3401, 3402; Hemingway's 1917, §§ 5931, 5932; 1930, §§ 2539, 2540; 1942, § 3374-89; Laws, 1950, ch. 491, § 89, eff from and after July 1, 1950.

Cross References — Municipal authorities appropriating funds for municipal expenses, see § 21-17-7.

Personal liability of municipal official issuing any warrant in excess of budget appropriation, see § 21-35-17.

Emergency warrants, see § 21-35-21.

Issuance of warrants for claims, see § 21-39-13.

Penalty for unauthorized appropriations, see § 21-39-15.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

ATTORNEY GENERAL OPINIONS

If payment for services was not previously authorized by a city board of aldermen by a contract approved on its minutes, then the board has no authority to pay a claim for such services and therefore must disallow the claim. Belk, July 2, 1999, A.G. Op. #99-0297.

§ 21-39-19. Duties of depository or treasurer.

The depository of the municipality, or the clerk as ex-officio treasurer where there is no depository, shall receive, safely keep, and pay out all moneys belonging to the municipality according to law. The depository or clerk shall keep correct and accurate accounts of all receipts and disbursements, and shall make a written report to the governing authorities, at each regular meeting, of the finances of the municipality. The depository or clerk shall perform such other duties as may be prescribed by ordinance. The funds of the municipality shall be paid out only by virtue of an order or ordinance duly spread on the minutes of such municipality.

SOURCES: Codes, 1892, § 2999; 1906, § 3396; Hemingway's 1917, § 5924; 1930, § 2533; 1942, § 3374-102; Laws, 1950, ch. 491, § 102, eff from and after July 1, 1950.

Editor's Note — Laws of 1974, ch. 400, amended this section to add a new paragraph authorizing certain municipalities to establish a fiscal or finance department. Since the subject matter of the added paragraph is not appropriate for this chapter, but more properly belongs in Chapter 17 of Title 21, the added paragraph has been made to appear as § 21-17-15.

Cross References — Municipal depositories, see §§ 27-105-301 et seq.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

Where the municipal authorities fix the amount of the bond of the treasurer and approve and accept a bond not signed by him but signed by others as sureties without his request or knowledge, it is valid and binding as to the sureties. Town of Gloster v. Harrell, 77 Miss. 793, 23 So. 520 (1898).

A defaulting treasurer and his sureties cannot escape liability because his official bond was approved by resolution instead of by ordinance. Town of Gloster v. Harrell, 77 Miss. 793, 23 So. 520 (1898).

RESEARCH REFERENCES

Am Jur. 63C Am. Jur. 2d, Public Funds §§ 5-10.

15 Am. Jur. Legal Forms 2d, Public Funds §§ 211:13 et seq. (depository agreements).

§ 21-39-21. Disposition of lost, stolen, abandoned or misplaced personal property.

The governing authorities of any municipality, upon the receipt or recovery of any lost, stolen, abandoned or misplaced personal property by the marshal, police or other officers of such municipality, shall cause to be posted, in three (3) public places in the municipality, notice that such property has been received or recovered. Such notice shall contain an accurate and detailed description of such property and, if the governing authorities are advised as to who owns such property, a copy of such notice shall be mailed to such person or persons in addition to being posted as herein required. The owner of such property may recover the same by filing a claim with the governing authorities of the municipality and establishing his right thereto. The governing authorities may require bond of the person claiming the property before delivering same to him. Parties having adverse claims to said property may proceed according to law as now provided by statutes.

If no person claims the property within one hundred twenty (120) days from the date the notice provided for above is given, the governing authorities of the municipality shall cause the same to be sold at public auction to the highest bidder for cash after first posting notice of such sale in three (3) public places in the municipality at least ten (10) days preceding the date of such sale. The notice shall contain a detailed and accurate description of the property to be sold and shall be addressed to the unknown owners or other persons interested in the property to be sold. The notice shall also set forth the date, time and place such sale is to be conducted and shall designate the person who is to make the sale, which person shall be some official designated by the governing authorities of the municipality.

However, lost, stolen, abandoned or misplaced motor vehicles and bicycles may be sold in the manner provided in the preceding paragraph after the expiration of ninety (90) days from their receipt or recovery by the officers of a municipality.

The person or officer designated and making the sale of such property shall promptly upon completion of the sale deliver to the clerk of the municipality a copy of the notice authorizing the sale, a list of the property sold, the amount paid for each item, the person to whom each item was sold, and all monies received from such sale, whereupon, the clerk shall deposit the monies in the general fund of the municipality and shall file the information concerning the sale among the other records of his office.

If, within ninety (90) days after date of the sale provided for above, any person claims to be the owner of the property sold, the governing authorities shall, upon satisfactory proof of ownership, pay to such person the amount for which such property was sold, and the governing authorities of the municipality may require of such person a bond in such cases as they may deem advisable. No action shall be maintained against a municipality or any of its officers or employees or the purchaser at the sale for any property sold hereunder or the proceeds therefrom after the expiration of ninety (90) days from the date of the sale as herein authorized.

A municipality may deduct wrecker and storage fees, not to exceed Five Hundred Dollars ($500.00), from the amount returned to the owner after the sale of property by the municipality. However, a municipality may not deduct wrecker and storage fees from the amount returned to the owner if the owner can prove the property was stolen and notifies the municipality.

SOURCES: Codes, 1942, § 3374-168; Laws, 1946, ch. 289; Laws, 1950, ch. 491, § 168; Laws, 1968, ch. 553; Laws, 1974, ch. 526; Laws, 1993, ch. 526, § 1; Laws, 2003, ch. 486, § 1, eff from and after July 1, 2003.

Cross References — Removal of personal property adjudicated to be a menace under § 21-19-11 not subject to the provisions of this section, see § 21-19-11.

Sale of abandoned motor vehicles, see § 63-23-5.

Bidding for forfeited beverages and property under alcoholic beverages control law, see § 67-1-17.

Uniform Disposition of Unclaimed Property Act, supplemental to this section, see §§ 89-12-1 et seq., particularly § 89-12-57.

ATTORNEY GENERAL OPINIONS

Miss. Code Section 21-39-21 gives governing authorities of any municipality procedure for disposing of “any lost, stolen, abandoned or misplaced personal property”; there is no statutory definition of “abandoned property” under this section; failure of owners of property seized in contemplation of forfeiture, where forfeiture proceeding did not take place promptly, qualified property as “abandoned”. Magee, Jan. 8, 1993, A.G. Op. #92-0909.

Municipalities cannot immobilize a vehicle for five days and then declare it to be abandoned and sell it; however, if vehicles remain at the impoundment lot or other storage facility for the required 120 days, after due notice has been provided to the owner, they may be deemed abandoned and sold. Pace, March 10, 2000, A.G. Op. #2000-0111.

The manner in which deadly weapons should be disposed of depends on the manner in which they were seized; specifically, Section 41-29-177 provides for the manner in which a weapon that has been seized and forfeited under the Uniform Controlled Substances Law should be disposed of; for all other deadly weapons that are seized, Section 45-9-151 should be followed; Section 21-39-21 is a general statute dealing with lost, stolen, abandoned or misplaced property, but Section 45-9-151 is specific to deadly weapons and therefore the more specific statute should be followed. Malta, May 26, 2000, A.G. Op. #2000-0221.

A vehicle reported by the Chicago Police Department to have been stolen and subsequently abandoned by that Department may be disposed of by the governing authorities of a city pursuant to statutory procedures. The city should make reasonable efforts to locate and notify the owner of the vehicle before selling it. If there is no buyer at a public auction the city may convert it to municipal use. Tutor, July 18, 2003, A.G. Op. 03-0347.

County may entertain an ordinance to provide for handling and disposition of lost or abandoned property to the extent such is not addressed elsewhere under the law, and further provided such ordinance comports with due process and otherwise passes constitutional muster. If there is no county ordinance in place that deals with the disposition of lost property, it would probably be safe for the county to follow the notice guidelines established in Section 21-39-21. Stewart, May 20, 2005, A.G. Op. 05-0181.

RESEARCH REFERENCES

Am Jur. 1 Am. Jur. Legal Forms 2d, Abandoned Lost, and Unclaimed Property § 1:43.1 (notice of sale of unclaimed property at public auction; general form).

§ 21-39-23. Applicability of particular sections.

The provisions of Sections 21-39-1, 21-39-3, 21-39-7 through 21-39-19, shall be applicable to all municipalities of this state, whether operating under a code charter, special charter, or the commission form of government, except in cases of conflict between the provisions of such sections and the provisions of the special charter of a municipality, or the law governing the commission form of government, in which cases of conflict the provisions of the special charter or the statutes relative to the commission form of government shall control.

SOURCES: Codes, 1942, § 3374-111; Laws, 1950, ch. 491, § 111, eff from and after July 1, 1950.

Editor's Note — Section 21-39-1, referred to in this section, was repealed by Laws of 1983, ch. 469, § 10.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

Const. 1890, §§ 80, 88, among other things providing for general laws to create and govern municipal corporations are prospective in operation and do not repeal existing municipal charters. Therefore this section recognizing the continued existence of such charters is not unconstitutional. Lum v. City of Vicksburg, 72 Miss. 590, 18 So. 476 (1895).

Its corporate authorities having formally accepted the provisions of the Code Chapter, the city of Jackson became bound thereby, and subsequent action of the authorities purporting to rescind the resolution of acceptance, though within twelve months, was ineffectual. State v. Govan, 70 Miss. 535, 12 So. 959 (1893).

Under this section declaring that after the chapter became operative, every municipality shall be governed by its provisions but that any municipality might within twelve months, "elect not to come under the provisions hereof," power was given municipalities affirmatively to accept the provisions of the chapter and be governed thereby. Ex parte Shlomberg, 70 Miss. 47, 11 So. 721 (1892).

§ 21-39-25. Repealed.

Repealed by Laws, 1988, Ex. Sess., ch. 14, § 74, eff from and after passage (approved August 16, 1988).

[En Laws, 1974, ch. 444, §§ 1-3]

Editor's Note — Former Section 21-39-25 provided for the liability of individual members of governing authorities of municipalities for actual losses caused by violations of the purchasing laws and provided for penal damages for substantial violations.

§ 21-39-27. Municipalities authorized to obtain credit cards for official travel by members of governing authority and municipal employees.

(1) The governing authority of any municipality may acquire one or more credit cards which may be used by members of the governing authority and municipal employees to pay expenses incurred by them when traveling in or out of the state in the performance of their official duties. The municipal clerk shall maintain complete records of all credit card numbers and all receipts and other documents relating to the use of such credit cards.

(2) The members of the governing authority and municipal employees shall furnish receipts for the use of such credit cards each month to the municipal clerk who shall submit a written report monthly to the governing authority. The report shall include an itemized list of all expenditures and use of the credit cards for the month, and such expenditures may be allowed for payment by the municipality in the same manner as other items on the claims docket.

(3) The issuance of a credit card to a member of the governing authority or municipal employee under the provisions of this section does not authorize the member of the governing authority or municipal employee to use the credit card to make any expenditure that is not otherwise authorized by law. Any member of the governing authority or municipal employee who uses the credit card to make an expenditure that is not approved for payment by the governing authority shall be personally liable for the expenditure and shall reimburse the municipality.

The employee shall be subject to all interest and fees and other charges related to the collection of expenditures not approved by the governing authority.

SOURCES: Laws, 2003, ch. 399, § 1, eff from and after passage (approved Mar. 14, 2003.)

CHAPTER 41

Special Improvements

Sec.
21-41-1. Special improvements authorized.
21-41-3. Kind of improvements authorized.
21-41-5. Resolution; notice of meeting to consider objections.
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21-41-45. Obligations not to exceed cost of improvements; authorization and procedures for interim financing in anticipation of borrowing for local improvements.
21-41-47. Obligations excepted from the limitations of indebtedness.
21-41-49. Refunding special assessment bonds.
21-41-51. Method of publishing notice.
21-41-53. Contracts for work to be let as other contracts for public work.

§ 21-41-1. Special improvements authorized.

Any municipality of this state may, by its governing authorities, cause the local improvements designated in Section 21-41-3 to be made, wholly or in part, at the cost of the property owners benefited thereby, by levying and collecting special assessments as provided in this chapter, and may finance such local improvements in the manner provided in this chapter.

SOURCES: Codes, 1930, § 2558; 1942, § 3664-01; Laws, 1924, ch. 194; Laws, 1950, ch. 495, § 1; Laws, 1952, ch. 378.

Cross References — Issuance of municipal bonds generally, see §§ 21-33-301 et seq.

Exemption of bonds issued by municipalities under §§ 21-41-1 through 21-41-53 from limitations on indebtedness, see § 21-33-303.

Municipalities financing cost of special improvements, see §§ 21-41-41 et seq.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.
7. Resolution concerning special improvements.
8. Creation of local assessment districts.
9. Property assessable.
10. Notice to property owners.
11. Protest by property owners.
12. Amount of special assessments.
13. Payment of special assessments.
14. Judicial review.

I. Under Current Law.

1. In general.

Dues of homeowners associations are not "assessments" within meaning of Mississippi Code § 21-41-1. Edwards v. Bridgetown Community Ass'n, 486 So. 2d 1235 (Miss. 1986).

2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

Special improvement statutes are legitimate exercises of the taxing power of the legislature. Ramond v. City of Bay St. Louis, 218 So. 2d 719 (Miss. 1969).

Special or local improvement statutes can be utilized for street improvements designated by the city council. Ramond v. City of Bay St. Louis, 218 So. 2d 719 (Miss. 1969).

Under this and other sections, a municipality, acting under the commission form of government, had all the powers possessed by other municipalities, except as otherwise provided by statute, and it was authorized to enter into a paving contract sued upon. Independent Paving Co. v. City of Bay St. Louis, 74 F.2d 961 (5th Cir. 1935).

In construing Laws 1912 ch. 260 city must pursue the statute with strictness. Dean v. Town of Senatobia, 142 Miss. 815, 108 So. 178 (1926).

Clear and unambiguous provisions of the statute will be enforced although conflicting with provisions of prior statutes, regardless of provisions that it shall not repeal any other statute relating to same subject matter. Stingily v. City of Jackson, 140 Miss. 19, 104 So. 465 (1925).

The constitutional provisions against reviving or amending the statute by reference to title only held not to refer to repeal or modification of statute because of conflict with provisions of later statute. Stingily v. City of Jackson, 140 Miss. 19, 104 So. 465 (1925).

Laws 1912 ch. 260 construed with reference to changing the mode of assessment and levy with reference to changing the mode of improvement previously adopted. Firm Lumber Co. v. City of Hattiesburg, 133 Miss. 808, 98 So. 145 (1923).

A city cannot surrender its right to pave in the future at the cost of abutting owners of street property. Edwards Hotel & City R. Co. v. City of Jackson, 96 Miss. 547, 51 So. 802 (1910).

7. Resolution concerning special improvements.

Where the municipality in order to make special improvements fixes a day to hear objections to the improvements, the governing authority of the municipality should have an opportunity to correct amendable defects, and failure on part of the person interested in improvements to object to defects in the resolution is a waiver thereof. Johnson v. City of Meridian, 212 Miss. 323, 54 So. 2d 402 (1951).

A resolution for sidewalk improvement, containing names of streets in the preamble and referring to them as "said streets" in body of resolution, held sufficient. City of McComb v. Barron, 147 Miss. 465, 112 So. 875 (1927).

Such resolution for sidewalk improvement must be sufficient to describe character of improvement proposed. City of McComb v. Barron, 147 Miss. 465, 112 So. 875 (1927).

Such resolution for sidewalk improvements may embrace more than one street. City of McComb v. Barron, 147 Miss. 465, 112 So. 875 (1927).

The court will look also to the preamble of a resolution authorizing improvements to determine whether improvements have been adjudged necessary. Dean v. Town of Senatobia, 142 Miss. 815, 108 So. 178 (1926).

With reference to the board being the sole judge of the necessity for special improvements, see City of Grenada v. Grenada County, 115 Miss. 831, 76 So. 682 (1917).

Where the charter of a city conferred power to build walks with stone they may be built of concrete. City of Vicksburg v. Robinson, 113 Miss. 687, 74 So. 617 (1917).

Where the first ordinance provided for paving to be done with one of three kinds of material a subsequent ordinance defining that it should be done by the use of only one kind of said materials held sufficient. Bryan v. City of Greenwood, 112 Miss. 718, 73 So. 728 (1917).

A case where a town's resolution for the construction of concrete sidewalks held to be a sufficient description of the character of improvements to enable the property owner to do the work himself. Langstaff v. Town of Durant, 111 Miss. 818, 72 So. 681 (1916).

Exemptions under an ordinance must be expressed in the clearest and most unambiguous terms. Edwards Hotel & City R. Co. v. City of Jackson, 96 Miss. 547, 51 So. 802 (1910).

It is necessary for the ordinance for special improvements to comply with the statute. City of Jackson v. Williams, 92 Miss. 301, 46 So. 551 (1908).

Under the Laws 1912 ch. 260 it is held that the character of improvements to be made need not be stated in the first resolution. Edwards House Co. v. City of Jackson, 91 Miss. 429, 45 So. 14 (1907).

A resolution reciting that a municipality is proceeding under a designated code section is equivalent to incorporating the language of the section into the resolution. Edwards House Co. v. City of Jackson, 91 Miss. 429, 45 So. 14 (1907).

8. Creation of local assessment districts.

The state is not prevented from authorizing changing from one system of taxation or assessment for local improvement to another by equal protection of law clause of the fourteenth amendment; equal protection of law clause of fourteenth amendment does not restrain state legislature in creation of local assessment districts; and is complied with if all property throughout assessment district is dealt with alike. Stingily v. City of Jackson, 140 Miss. 19, 104 So. 465 (1925).

Determination by subordinate agency of territorial district to be taxed for local improvement is conclusive in absence of fraud or abuse of discretion. Stingily v. City of Jackson, 140 Miss. 19, 104 So. 465 (1925).

9. Property assessable.

State's property may not be, and court will assume is not, embraced in statute making abutting property liable for local improvements. Lord v. City of Kosciusko, 170 Miss. 169, 154 So. 346 (1934).

Though State owned fee of sixteenth-section school lands, exclusive right of lessee thereof to use and possession during lease was "property right" assessable for local improvements. Lord v. City of Kosciusko, 170 Miss. 169, 154 So. 346 (1934).

Property adjacent to neutral ground on which light was erected was abutting property properly chargeable with part of cost. McArthur v. City of Picayune, 156 Miss. 456, 125 So. 813 (1930).

Property on one street cannot be assessed for payment of costs of paving other streets. Stingily v. City of Jackson, 140 Miss. 19, 104 So. 465 (1925).

County cannot be subjected to liability for special improvements, determined necessary by city, on street in front of county courthouse. City of Grenada v. Grenada County, 115 Miss. 831, 76 So. 682 (1917).

On the question of property owner doing the work himself, see Langstaff v. Town of Durant, 111 Miss. 818, 72 So. 681 (1916).

An abutting property owner to whom opportunity was given to protest against certain improvements on a street before the work was begun cannot object for the first time after the improvement is completed and the benefits have accrued. Edwards House Co. v. City of Jackson, 91 Miss. 429, 45 So. 14 (1907).

10. Notice to property owners.

Publication of giving of notice as the statute requires is jurisdictional and a substantial departure from the statute in that respect will render the proceeds void. City of Jackson v. Tucker, 136 Miss. 787, 101 So. 708 (1924).

A city is unauthorized to pave a street at the expense of the abutting property without proper notice to the owner. Langstaff v. Town of Durant, 111 Miss. 818, 72 So. 681 (1916); Bryan v. Greenwood, 112 Miss. 718, 73 So. 728 (1917); Sparks v. Jackson, 118 Miss. 502, 79 So. 67 (1918); City of Jackson v. Buckley, 123 Miss. 56, 85 So. 122 (1920).

Notice giving an abutting property owner whether resident or nonresident an opportunity to appear and object to special improvement, does not deprive one of his property without due process of law. Union Sav. Bank & Trust Co. v. City of Jackson, 122 Miss. 557, 84 So. 388 (1920).

A person having notice as the law requires and failing to protest at the proper time is precluded. Bryan v. City of Greenwood, 112 Miss. 718, 73 So. 728 (1917).

Where a municipality is without a newspaper notice of a resolution must be posted under the Laws 1912, ch. 260. Langstaff v. Town of Durant, 111 Miss. 818, 72 So. 681 (1916).

If the city's notice of special assessment indicates the city is to do all the work it is no notice to property owners that they are to pay part of expense. City of Greenville v. Harvie, 79 Miss. 754, 31 So. 425 (1902).

11. Protest by property owners.

As to who may file protest, see Union Sav. Bank & Trust Co. v. City of Jackson, 122 Miss. 557, 84 So. 388 (1920).

As to hearing objections to assessment, see Union Sav. Bank & Trust Co. v. City of Jackson, 122 Miss. 557, 84 So. 388 (1920).

12. Amount of special assessments.

A city beginning paving without assessing abutting property cannot, against the wishes of owners, assess a portion thereof against the property. City of Canton v. Davis, 145 Miss. 610, 111 So. 137 (1927).

Unless orders for paving conform to conditions of petition as to cost, property cannot be charged on the theory of contract or estoppel. City of Canton v. Davis, 145 Miss. 610, 111 So. 137 (1927).

A municipality may be empowered to assess entire cost of paving including intersections according to front foot rule. Stingily v. City of Jackson, 140 Miss. 19, 104 So. 465 (1925).

On the subject of cost of special improvements becoming a lien on abutting property, see City of Pascagoula v. Valverde, 138 Miss. 399, 103 So. 198 (1925).

As to uniform assessment of abutting property owner. City of Jackson v. Doxey, 128 Miss. 618, 91 So. 348 (1922).

A person upon whom no greater burden in paving is imposed than required by law cannot complain of his assessment on the ground that the street railway company was not required to do certain work. City of Jackson v. Buckley, 123 Miss. 56, 85 So. 122 (1920).

Where the ordinance does not provide for the laying of water pipes an abutting property owner cannot be required to pay for same. City of Jackson v. Hart, 117 Miss. 871, 78 So. 780 (1918).

The abutting property owners cannot be required to grade a street where the charter of the city required city to do the grading for laying of sidewalks. City of Vicksburg v. Robinson, 113 Miss. 687, 74 So. 617 (1917).

As to the method of fixing cost of assessment for sidewalks, see Langstaff v. Town of Durant, 111 Miss. 818, 72 So. 681 (1916).

An abutting property owner by his petition to have certain work done may be estopped to object thereto where it is being done in the proper manner. Oliver v. City of Macon, 111 Miss. 349, 71 So. 575 (1916).

As to the right to apportion cost of paving to abutting property owners under the city charter, see Duncan v. City of Grenada, 106 Miss. 874, 64 So. 834 (1914).

Fixing assessment for street improvements. Edwards Hotel & City R. Co. v. City of Jackson, 96 Miss. 547, 51 So. 802 (1910).

Apportioning the cost of the front foot rule is held not to be taking or damaging of private property for public use and is not violative of § 112 of the Constitution. Edwards House Co. v. City of Jackson, 91 Miss. 429, 45 So. 14 (1907).

13. Payment of special assessments.

Bill for recovery of special assessments need not allege counsel's authority to bring suit. City of McComb v. Barron, 147 Miss. 465, 112 So. 875 (1927).

The property owner is liable for interest on an item properly assessed against him although he may succeed in defeating other items. Buckley v. City of Jackson, 125 Miss. 780, 88 So. 334 (1921).

An assessment is void when made without proper notice to the owner of the property assessed. City of Jackson v. Mims, 123 Miss. 78, 85 So. 124 (1920).

As to time of paying assessment, see City of Grenada v. Grenada County, 115 Miss. 831, 76 So. 682 (1917).

And this notice is a condition precedent to fixing lien upon the property of an abutting owner. Langstaff v. Town of Durant, 111 Miss. 818, 72 So. 681 (1916).

14. Judicial review.

The mayor and commissioners exercise a legislative function in determining the character and extent of street improvements, and their decision is reviewable only if it is unlawful, or arbitrary, or reflects an abuse of discretion. Ramond v. City of Bay St. Louis, 218 So. 2d 719 (Miss. 1969).

RESEARCH REFERENCES

ALR. Liability for improvement assessments as between vendor and purchaser. 59 A.L.R.2d 1044.

Exemption of public school property from assessments for local improvements. 15 A.L.R.3d 847.

Am Jur. 70C Am. Jur. 2d, Special or Local Assessments §§ 5-9.

16B Am. Jur. Legal Forms 2d, Special or Local Assessments §§ 236; 1 et seq.

CJS. 63 C.J.S., Municipal Corporations §§ 1470-1471.

§ 21-41-3. Kind of improvements authorized.

The following local improvements may be constructed hereunder, to wit:

(a) Streets, highways, boulevards, avenues, squares, lanes, alleys and parks, or any part thereof may be opened, reopened, widened, graded, regraded, paved, repaved, surfaced, resurfaced, and curbs and gutters may be constructed or reconstructed therein.

(b) Sidewalks may be graded, regraded and leveled, laid, relaid, paved, repaved, surfaced or resurfaced.

(c) Water mains, water connections, sanitary disposal systems, sanitary sewers, storm covers, and other surface drains or drainage systems may be laid, relaid, and constructed or reconstructed.

(d) A project for which a certificate of public convenience and necessity has been obtained by the municipality pursuant to the Regional Economic Development Act.

SOURCES: Codes, 1930, § 2559; 1942, § 3664-02; Laws, 1924, ch. 194; Laws, 1950, ch. 495, § 2; Laws, 2000, 2nd Ex Sess, ch. 1, § 19, eff from and after passage (approved Aug. 30, 2000.)

Editor's Note — Laws of, 2000, 2nd Ex Sess, ch. 1, § 1 provides:

"SECTION 1. This act may be cited as the 'Advantage Mississippi Initiative.'"

Cross References — Authority for construction and maintenance of sidewalks, streets, sewers and parks, see §§ 21-37-3, 21-37-5.

Authority to make special improvements, see § 21-41-1.

Authority for governing authorities to borrow money to make improvements, see § 21-41-41.

Authorization for interim financing in anticipation of borrowing under § 21-41-41 for improvements authorized by this section, see § 21-41-45.

Contracts for work upon special improvements being let as other contracts for public works, see § 21-41-53.

Regional Economic Development Act, see §§ 57-64-1 et seq.

JUDICIAL DECISIONS

1. In general.

The legality of a proceeding to authorize construction and financing of a new street would be tested as of the time the proceeding was begun. Sellers v. City of Jackson, 221 Miss. 150, 72 So. 2d 247 (1954), error overruled, 73 So. 2d 776 (Miss. 1954), dissenting opinion, 221 Miss. 175, 75 So. 2d 265 (1954).

RESEARCH REFERENCES

ALR. Widening of city street as local improvement justifying special assessment of adjacent property. 46 A.L.R.3d 127.

Am Jur. 70C Am. Jur. 2d, Special or Local Assessments §§ 29-48.

9 Am. Jur. Pl & Pr Forms (Rev), Drains and Drainage Districts Form 3 (drain, construction, application to municipal governing body).

CJS. 63 C.J.S., Municipal Corporations §§ 1472 et seq.

§ 21-41-5. Resolution; notice of meeting to consider objections.

When the governing authorities of any municipality shall determine to make any local or special improvement, the cost of which or any part thereof is to be assessed against the property benefited, they shall adopt a resolution declaring necessary the proposed improvement describing the nature and extent of the work, the general character of the material to be used, and the location and terminal points of the streets, highways, boulevards, avenues, squares, alleys or parks, or parts thereof, or clearly define the boundary of areas in which said improvements are to be made. In publishing said resolution declaring the work necessary, the plans and specifications of said work need not be published but may be referred to as being on file in the office of the city clerk or city engineer. The publication of the resolution may be made as provided in Section 21-17-19. Said resolution shall fix a date when the governing authorities of said municipality shall meet, which shall be not less than fifteen (15) days after the date of the first publication of the notice herein provided for, to hear any objections or remonstrances that may be made to said improvements. The notice herein provided for shall be published once each week for three (3) successive publications in a public newspaper having a general circulation in the municipality, and if no newspaper is published therein it shall be sufficient to post said notice in three (3) public places of the municipality for not less than fifteen (15) days before said meeting, one which shall be posted at the town or city hall of said municipality. Moreover, the clerk of the municipality shall send a copy of the notice, by certified mail, postage prepaid, within five (5) days after the first publication of the notice herein provided for, to the last-known address of owners of property affected by the resolution. However, failure of the clerk to mail such notice or failure of the owner to receive such notice shall not invalidate any proceeding in this chapter, where such notice has been published as provided herein. Notice declaring the work necessary shall be notice to the property owners that the work has been declared necessary.

If the governing authorities of a municipality desire to make any special or local improvement under the Regional Economic Development Act, the governing authorities also shall comply with any requirements provided therein.

SOURCES: Codes, 1930, § 2560; 1942, § 3664-03; Laws, 1924, ch. 194; Laws, 1936, ch. 284; Laws, 1950, ch. 495, § 3; Laws, 1958, ch. 522; Laws, 1988, ch. 457, § 9; Laws, 2000, 2nd Ex Sess, ch. 1, § 20, eff from and after passage (approved Aug. 30, 2000.)

Editor's Note — Laws of 2000, 2nd Ex Sess, ch. 1, § 1 provides:

"SECTION 1. This act may be cited as the 'Advantage Mississippi Initiative.'"

Cross References — Details of meeting of governing authorities to consider objections to proposed improvement, see § 21-41-7.

Methods of publishing notice, see § 21-41-51.

Provision of funds for debt service with respect to special improvement bonds issued by a joint water management district, see § 51-8-45.

Regional Economic Development Act, see §§ 57-64-1 et seq.

JUDICIAL DECISIONS

1. In general.
2.-5. [Reserved for future use.]
6. Under former law.

1. In general.

A resolution of a city council which recited, among other things, that on certain streets the majority of property owners owning more than 50 percent of the front footage of the property and actually residing on the property or otherwise actually occupying the property filed protests against certain designated streets, and that those were removed from the proposed improvement, and further stated that other streets on which there was not a majority protesting were included in the improvement program, the resolution contained no jurisdictional defects; and it was not necessary to adjudicate evidentiary facts which the mayor and commissioners considered prior to making their determinations on the ultimate facts. Ramond v. City of Bay St. Louis, 218 So. 2d 719 (Miss. 1969).

In a proceeding to authorize construction and financing of the street where the only issue left undecided was the amount of the special assessment tax upon various landowners and proper notice was given and no objection was entered until all the work was completed, the property owners were estopped to raise questions previously decided by the city council. Sellers v. City of Jackson, 221 Miss. 150, 72 So. 2d 247 (1954), error overruled, 73 So. 2d 776 (Miss. 1954), dissenting opinion, 221 Miss. 175, 75 So. 2d 265 (1954).

2.-5. [Reserved for future use.]

6. Under former law.

Where the city council gave notice on September 12, 1949, to hear and consider protests of property owners whose lands abutted on streets and avenues mentioned in a resolution to make special improvements and resolution was also published in the manner and for the time required by law, a protest filed on May 5th, 1951, was not filed in due time and should not be sustained. Johnson v. City of Meridian, 212 Miss. 323, 54 So. 2d 402 (1951).

Due process of law is complied with if notice of assessment for improvement is given to property owner, without notice of prior proceedings. City of Lexington v.

Wilson's Estate, 170 Miss. 282, 151 So. 164 (1933).

Property owner, failing to protest until after completion of work, was not entitled to relief on ground plans and specifications did not properly locate lights. McArthur v. City of Picayune, 156 Miss. 456, 125 So. 813 (1930).

Where statute was not complied with in calling meeting to adopt ordinance levying special assessments and providing for notice thereof, assessment was nullity. Wilson v. City of Lexington, 153 Miss. 212, 121 So. 859 (1929), corrected, 155 Miss. 157, 124 So. 268 (1929).

Where proceeding for levying special assessments was void, taxpayer's appearance for purpose of protest did not confer jurisdiction upon board. Wilson v. City of Lexington, 153 Miss. 212, 121 So. 859 (1929), corrected, 155 Miss. 157, 124 So. 268 (1929).

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

Am Jur. 70C Am. Jur. 2d, Special or Local Assessments §§ 127, 131, 132, 138-161.

16B Am. Jur. Legal Forms 2d, Special or Local Assessments § 236:18 (notice of hearing before legislative body).

9 Am. Jur. Pl & Pr Forms (Rev), Drains and Drainage Districts, Form 11 (drain or sewer, construction, notice to landowners).

18A Am. Jur. Pl & Pr Forms (Rev), Notice, Form 1 (notice, general form).

18A Am. Jur. Pl & Pr Forms (Rev), Notice, Forms 24, 25 (affidavit of notice by posting or publication).

22 Am. Jur. Pl & Pr Forms (Rev), Special or Local Assessments, Forms 11-14 (notices).

1 Am. Jur. Proof of Facts 297, Advertisements.

CJS. 63 C.J.S., Municipal Corporations §§ 1582-1591.

§ 21-41-7. Meeting to consider objections to proposed improvement.

At said meeting provided for by Section 21-41-5, or at a time and place to which same may be adjourned, any person aggrieved may appear in person, by attorney or by petition, and may object to or protest against said improvement or any part thereof. The governing authorities shall consider the objections and protests, if any, and may confirm, amend, modify or rescind the resolution of necessity, and shall determine whether said improvement shall be made and how the cost thereof shall be paid. The determination of such governing authorities shall be final and conclusive. However, if a majority of property owners owning more than fifty per cent of the front footage of the property involved and actually residing on property owned by them and included within that part of any street, avenue, or the like, ordered to be specially improved, or otherwise actually occupying property owned by them and included within that area shall file a protest, then the improvement shall not be made.

SOURCES: Codes, 1930, § 2561; 1942, § 3664-04; Laws, 1924, ch. 194; Laws, 1950, ch. 495, § 4, eff from and after July 1, 1950.

Cross References — Notice of meeting of governing authorities to consider objections to proposed improvement, see § 21-41-5.

Provision of funds for debt service with respect to special improvement bonds issued by a joint water management district, see § 51-8-45.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

This section [Code 1942, § 3364-04] permits written objections only up to the time set for the validation hearing, and thereafter it was within the discretion of the chancellor to allow or overrule a motion to amend objections filed by the protestants. Ramond v. City of Bay St. Louis, 218 So. 2d 719 (Miss. 1969).

In a taxpayer's suit attacking the validity of a contract between the city and company for professional services by the company in making a detailed appraisal and valuation study of all properties in the city including its replacement, physical and other values, if the taxpayers were aggrieved by tax assessments affecting their property based upon valuations made by the city assessor under the contract, they should have sought relief by filing objections with the mayor and the board of aldermen and by appealing from such assessments in the manner provided by the statute. Alexander v. Mayor of City of Natchez, 219 Miss. 78, 68 So. 2d 434 (1953), motion overruled on other grounds, 220 Miss. 207, 70 So. 2d 529 (1954).

2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

Where the city council gave notice on September 12, 1949, to hear and consider protests of property owners whose lands abutted on streets and avenues mentioned in a resolution to make special improvements and resolution was also published in the manner and for the time required by law, a protest filed on May 5th, 1951, was not filed in due time and should not be sustained. Johnson v. City of Meridian, 212 Miss. 323, 54 So. 2d 402 (1951).

Statute held to authorize mayor and city commissioners, after completion of paving, to institute proceedings for compliance with statute governing manner of assessment for paving, including giving notice and opportunity for hearing in making assessments. City of Clarksdale v. Fitzgerald, 181 Miss. 135, 179 So. 269 (1938).

Owners of property abutting street, though nonresidents of designated area who occupy such property through tenants, held qualified to protest improvement. City of Indianola v. Faison, 159 Miss. 520, 132 So. 550 (1931).

Issues arising under law relating to objections to improvement by majority of property owners are appealable. Faison v. City of Indianola, 156 Miss. 872, 127 So. 558 (1930).

ATTORNEY GENERAL OPINIONS

In order to defeat a proposed special improvement, objection by property owners who together own at least fifty-one percent of the front footage of property under consideration by municipal governing authorities is required, and persons owning more than fifty percent of the front footage property constitute a majority whether or not they constitute a majority of all persons owning front footage. Perry, Feb. 12, 1992, A.G. Op. #92-0014.

RESEARCH REFERENCES

Am Jur. 70A Am. Jur. 2d, Special or Local Assessments §§ 138-161.

16A Am. Jur. Legal Forms 2d, Special or Local Assessments § 236:22 (protest to proposed special assessment).

CJS. 63 C.J.S., Municipal Corporations §§ 1589, 1671, 1675, 1676.

§ 21-41-9. Whole or part of cost of improvement may be charged against property benefited.

The resolution determining to proceed with the said improvement may direct that the cost and expense of the improvements authorized, or such part as the governing authorities shall fix, shall be a charge upon the property benefited. In said resolution the governing authorities shall direct that the whole or such part of the cost and expense thereof, as they shall fix, shall be assessed against the property abutting upon the improvement, according to the frontage thereof, in the following manner: by taking the number of front feet improved and dividing the total cost of the whole improvement thereby and multiplying the quotient by the number of front feet contained in such abutting lot or pieces of ground; the result shall be assessed by the governing authorities as the amount of the special tax to be assessed against each lot or piece of ground, except that the entire cost of improvements as to sidewalks, curbs, and gutters shall be assessed against the property on which said improvements or any of them abut for its entire frontage only.

In the case of water mains, water connections, sanitary sewers or sanitary disposal systems, the said resolution shall provide that the entire cost thereof, or so much of the same as the governing authorities of the municipality shall fix, shall be assessed against either the property benefited or the property on which each such improvement is located, without regard to the front footage of such improvement.

Alternatively, in the case of sanitary sewers and sanitary disposal systems, the said resolution may define the entire area to be benefited by the improvement, and may direct that the cost to be assessed against each lot or parcel of land shall be determined by dividing the entire cost thereof by the total number of front feet fronting on all the streets embraced within said improvement area, and multiplying the quotient by the number of feet of street frontage in any particular lot or parcel of land. The result thereof shall be assessed by the governing authorities as the amount of special tax against each lot or piece of ground for the owner's part of the cost of the entire improvement.

In the case of storm sewers and surface drains or drainage systems, the said resolution shall clearly define the area to be benefited by the improvement contemplated, and shall determine that the cost of the improvement to be assessed against each lot or parcel of land within said area shall be determined by dividing the entire cost of the improvement by the total number of square feet in the area defined, and multiplying the quotient by the number of square feet contained in any particular lot or parcel of land within said area. The result thereof shall be assessed by the governing authorities as the amount of special tax against each lot or piece of ground as the owner's part of the cost of the entire improvement. However, if a majority of the property owners owning more than fifty percent (50%) of the property involved and determined to be benefited by the contemplated improvement shall file a protest, then such improvement shall not be made.

If there be a steam, electric or other railroad track, or tracks, on any street, highway, or other public thoroughfare improved, paved, or repaved, under the provision of this chapter, the cost of such improvement between the tracks, and the rails of the tracks, and in case there be two (2) or more tracks, the space between such tracks and eighteen (18) inches on each side thereof, including switches and turnouts, shall be paid by the owner of the railroad and shall be assessed to and form a lien on said railroad and all the property connected therewith including power plant, wire, poles, and the like, if said railroad be operated by electricity. In the event storm or other sewers are constructed under the provisions of this chapter, which drain the streets or other public thoroughfares and rights-of-way, in which a steam, electric or other railroad has been constructed, there shall be assessed against such railroad a fair and just proportion of the cost of the construction of such sewer, to be determined by the governing authorities of such municipality, and such assessment shall be a lien upon the said railroad. However, nothing herein contained shall affect the right or power of the governing authorities of the municipality to require the owner of such railroad to repair or reconstruct its tracks or the pavement between the same and on either side thereof under any franchise granted to such owner or its predecessors in title, or under any contract made with such owner or its predecessors in title.

SOURCES: Codes, 1930, §§ 2562, 2563; 1942, §§ 3664-05, 3664-06; Laws, 1924, ch. 194; Laws, 1950, ch. 495, §§ 5, 6; Laws, 1984, ch. 377, eff from and after July 1, 1984 (became law without Governor's signature April 16, 1984).

Cross References — Levy by special assessment to pay for fire protection, see § 21-25-27.

What is deemed to be part of cost, see § 21-41-11.

Notice of meeting to consider objections to assessment roll, see § 21-41-13.

Determination of final assessments, see § 21-41-15.

Municipalities borrowing money to make special improvements, see § 21-41-41.

Provision of funds for debt service with respect to special improvement bonds issued by a joint water management district, see § 51-8-45.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

A purchaser under a special improvements sale acquired superior rights to one purchasing under a municipal ad valorem tax sale. Shelton v. Reliance Inv. Co., 230

Miss. 51, 92 So. 2d 329 (1957).

2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

Statute held to authorize mayor and city commissioners, after completion of paving, to institute proceeding for compliance with statute governing manner of assessment for paving, including giving notice and opportunity for hearing in making assessments. City of Clarksdale v. Fitzgerald, 181 Miss. 135, 179 So. 269 (1938).

Reassessment for improvement is an independent proceeding. City of Lexington v. Wilson's Estate, 170 Miss. 282, 151 So. 164 (1933).

Where appeal from reassessment by city's governing authority to circuit court was in compliance with statutes then in effect, circuit court did not lose jurisdiction to hear appeal because law respecting appeal was changed before appeal was heard. City of Lexington v. Wilson's Estate, 170 Miss. 282, 151 So. 164 (1933).

Judgment that assessment was nullity because board of mayor and aldermen were not legally constituted when assessment was made, held not res judicata in subsequent proceeding wherein property owner claimed reassessment was void because board did not declare cost of project. City of Lexington v. Wilson's Estate, 170 Miss. 282, 151 So. 164 (1933).

Reassessment for improvement must conform to statute authorizing reassessment. City of Lexington v. Wilson's Estate, 170 Miss. 282, 151 So. 164 (1933).

Statute authorizing reassessment where assessment is invalid authorized municipality, where contract has been completed, to continue to undertake to levy assessments on notice until assessment is accomplished. City of Lexington v. Wilson's Estate, 170 Miss. 282, 151 So. 164 (1933).

Statute authorizing reassessment for improvement where assessment is invalid, is curative of every defect in record precedent to attempt to levy assessment. City of Lexington v. Wilson's Estate, 170 Miss. 282, 151 So. 164 (1933).

Property is not taken without due process by statute authorizing assessment of cost of improvement on abutting property, though exceeding benefits. Swayne v. City of Hattiesburg, 147 Miss. 244, 111 So. 818, 56 A.L.R. 926 (1927), aff'd, 276 U.S. 599, 48 S. Ct. 320, 72 L. Ed. 724 (1928).

Assessment of the entire cost of paving a street against abutting property, while paying part of the cost of paving other streets out of money raised by general taxation, does not offend a constitutional requirement that taxation be equal and uniform. Stingily v. City of Jackson, 140 Miss. 19, 104 So. 465 (1925).

ATTORNEY GENERAL OPINIONS

There is no provision for governing authorities to exempt some property owners whose property abuts on improvements from paying proportionate share of costs on grounds that their property will not in fact be benefited; if governing authorities decide to construct new street as special improvement, governing authorities must assess all of property abutting upon improvement according to front footage rule. Jordan, Sept. 16, 1992, A.G. Op. #92-0669.

RESEARCH REFERENCES

Am Jur. 70C Am. Jur. 2d, Special or Local Assessments §§ 79-86.

CJS. 63 C.J.S., Municipal Corporations §§ 1597 et seq.

§ 21-41-11. What is to be deemed part of cost.

The governing authorities of such municipality shall have power to pay out of their general fund, or out of any special fund that may be provided for that purpose, such portion of the cost of the proposed improvement as they may deem proper. Interest accrued while an improvement is under construction, and for six (6) months thereafter, together with interest on interim financing authorized by Section 21-41-45 allocable on a pro rata basis to each such improvement, shall be deemed part of the cost thereof. Actual engineering and inspection costs, properly chargeable to any improvement, shall be deemed a part of the cost of the improvement. All costs for the issuance of the bonds hereinafter provided for shall be deemed part of the cost of the improvement.

SOURCES: Codes, 1930, § 2563; 1942, § 3664-06; Laws, 1924, ch. 194; Laws, 1950, ch. 495, § 6; Laws, 1987, ch. 414, § 1, eff from and after July 1, 1987.

Cross References — Whole or part of cost of improvement chargeable against property benefited, see § 21-41-9.

Notice of meeting to consider objections to assessment roll, see § 21-41-13.

Determination of final assessments, see § 21-41-15.

Authorization for interim financing in anticipation of borrowing under this section for improvements authorized by § 21-41-3, see § 21-41-45.

Provision of funds for debt service with respect to special improvement bonds issued by a joint water management district, see § 51-8-45.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

Statute held to authorize mayor and city commissioners, after completion of paving, to institute proceeding for compliance with statute governing manner of assessment for paving, including giving notice and opportunity for hearing in making assessments. City of Clarksdale v. Fitzgerald, 181 Miss. 135, 179 So. 269 (1938).

Judgment that assessment was nullity because board of mayor and aldermen were not legally constituted when assessment was made, held not res judicata in subsequent proceeding wherein property owner claimed reassessment was void because board did not declare cost of project. City of Lexington v. Wilson's Estate, 170 Miss. 282, 151 So. 164 (1933).

Legislature may dispense with precedent resolutions and permit municipality's governing authority to improve streets and charge costs to abutting owners without notice anterior to date of assessment. City of Lexington v. Wilson's Estate, 170 Miss. 282, 151 So. 164 (1933).

Reassessment for improvement is an independent proceeding. City of Lexington v. Wilson's Estate, 170 Miss. 282, 151 So. 164 (1933).

RESEARCH REFERENCES

ALR. Inclusion, in special assessment of interest accruing during construction of public improvement and until special assessments therefor become due. 58 A.L.R.2d 1343.

Am Jur. 70C Am. Jur. 2d, Special or Local Assessments §§ 79-86.

CJS. 63 C.J.S., Municipal Corporations §§ 1599, 1601.

§ 21-41-13. Assessment roll; assessment book; notice of meeting to consider objections.

Upon the completion of any improvement authorized by this chapter, the governing authorities shall ascertain and determine the cost of the improvement and declare the same by resolution. Upon said completion the governing authorities shall cause to be prepared a roll or list to be called the "assessment roll" showing the names of the property owners, and, opposite each name a description of each parcel of land. Such roll shall be entered in a well-bound book prepared for that purpose, which shall contain appropriate columns in which payments may be credited. Said book shall be known as "assessment book for local improvements." It shall be a public record and the entry therein of any assessment shall be and constitute notice to the public of the lien against the land so assessed, and no other record or notice thereof shall be necessary to any person or corporation for that purpose. No error, omission or mistake in regard to the name of the owner shall be held to invalidate any assessment. After the completion of the said assessment roll it shall be delivered to the clerk of the municipality, or to the officer performing the duties of such clerk, who shall thereupon give a notice by publication in some newspaper published in said municipality that the assessment roll (for that piece of local improvement made) has been delivered to him and is open for inspection at his office, and that at a time and place therein mentioned, not less than fifteen days from the date of the first publication, the governing authorities of said municipality will meet to hear and determine any objections or defense.

SOURCES: Codes, 1930, § 2563; 1942, § 3664-06; Laws, 1924, ch. 194; Laws, 1950, ch. 495, § 6, eff from and after July 1, 1950.

Cross References — Levy by special assessment to pay for fire protection, see § 21-25-27.

Whole or part of cost of improvement chargeable against property benefited, see § 21-41-9.

What is deemed to be part of cost, see § 21-41-11.

Determination of final assessments, see § 21-41-15.

Change or division of assessment, see § 21-41-33.

Methods of publishing notice, see § 21-41-51.

Provision of funds for debt service with respect to special improvement bonds issued by a joint water management district, see § 51-8-45.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

Where property previously sold for municipal ad valorem taxes was also sold for special improvement taxes to another person, the special improvements tax purchaser acquired complete title upon the failure of the municipal ad valorem tax purchaser to redeem within two years from the date of sale. Shelton v. Reliance Inv. Co., 230 Miss. 51, 92 So. 2d 329 (1957).

2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

Statute held to authorize mayor and city commissioners, after completion of paving, to institute proceeding for compliance with statute governing manner of assessment for paving, including giving notice and opportunity for hearing in making assessments. City of Clarksdale v. Fitzgerald, 181 Miss. 135, 179 So. 269 (1938).

Statute authorizing reassessment where assessment is invalid authorized municipality, where contract has been completed, to continue to undertake to levy assessments on notice until assessment is accomplished. City of Lexington v. Wilson's Estate, 170 Miss. 282, 151 So. 164 (1933).

Reassessment for improvement is an independent proceeding. City of Lexington v. Wilson's Estate, 170 Miss. 282, 151 So. 164 (1933).

Where appeal from reassessment by city's governing authority to circuit court was in compliance with statutes then in effect, circuit court did not lose jurisdiction to hear appeal because law respecting appeal was changed before appeal was heard. City of Lexington v. Wilson's Estate, 170 Miss. 282, 151 So. 164 (1933).

Reassessment for improvement must conform to statute authorizing reassessment. City of Lexington v. Wilson's Estate, 170 Miss. 282, 151 So. 164 (1933).

Statute authorizing reassessment for improvement where assessment is invalid, is curative of every defect in record precedent to attempt to levy assessment. City of Lexington v. Wilson's Estate, 170 Miss. 282, 151 So. 164 (1933).

Reassessment for street improvement held invalid where governing authority did not determine cost and declare cost by resolution. City of Lexington v. Wilson's Estate, 170 Miss. 282, 151 So. 164 (1933).

Under statute authorizing reassessment where assessment for improvement is invalid, de novo proceeding is not necessary. City of Lexington v. Wilson's Estate, 170 Miss. 282, 151 So. 164 (1933).

Legislature may dispense with precedent resolutions and permit municipality's governing authority to improve streets and charge costs to abutting owners without notice anterior to date of assessment. City of Lexington v. Wilson's Estate, 170 Miss. 282, 151 So. 164 (1933).

Judgment that assessment was nullity because board of mayor and aldermen were not legally constituted when assessment was made, held not res judicata in subsequent proceeding wherein property owner claimed reassessment was void because board did not declare cost of project. City of Lexington v. Wilson's Estate, 170 Miss. 282, 151 So. 164 (1933).

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

Am Jur. 70C Am. Jur. 2d, Special or Local Assessments §§ 87-105.

16B Am. Jur. Legal Forms 2d, Special or Local Assessments §§ 236:18-236:22 (notice of and protest to assessment).

22 Am. Jur. Pl & Pr Forms (Rev), Special or Local Assessments, Form 14 (notice of preparation of special assessment roles and of hearing on objections).

1 Am. Jur. Proof of Facts 297, Advertisements.

CJS. 63 C.J.S., Municipal Corporations §§ 1636-1639.

§ 21-41-15. Determination of final assessments.

Assessments shall be made and apportioned in the manner fixed by the resolution of the governing authorities determining to proceed with the improvement. The owner of any property assessed for an improvement, or any party having an interest therein, may appear at the time and place fixed for the hearing and determining of any objections or defense, and object to the proposed assessment against the property or to the amount thereof. The governing authorities of the municipality shall hear and determine all objections and protests to the proposed assessment, under such reasonable rules and regulations as they may adopt. At such meeting, or at any adjournment thereof, the governing authorities may alter, change or correct any assessment; however, no assessment shall be increased without notice to the owner of the property. The governing authorities shall, by resolution, approve and confirm all assessments as finally fixed and adjusted at the said hearing, and said assessments shall, from the date of such confirmation, constitute a lien upon the respective lots or parcels of lands and other real property upon which they are levied, superior to all other liens except those for state and county taxes. All persons who fail to object to the proposed assessments, in the manner herein provided shall be deemed to have consented to and approved the same. Any property owner aggrieved by the decision of the governing authorities may appeal to the circuit court.

SOURCES: Codes, 1930, § 2563; 1942, § 3664-06; Laws, 1924, ch. 194; Laws, 1950, ch. 495, § 6, eff from and after July 1, 1950.

Cross References — Whole or part of cost of improvement chargeable against property benefited, see § 21-41-9.

What is deemed to be part of cost, see § 21-41-11.

Notice of meeting to consider objections to assessment roll, see § 21-41-13.

Change or division of assessment, see § 21-41-33.

Provision of funds for debt service with respect to special improvement bonds issued by a joint water management district, see § 51-8-45.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

I. Under Current Law.

1. In general.

Where property previously sold for municipal ad valorem taxes was also sold for special improvement taxes to another person, the special improvements tax purchaser acquired complete title upon the failure of the municipal ad valorem tax purchaser to redeem within two years from the date of sale. Shelton v. Reliance Inv. Co., 230 Miss. 51, 92 So. 2d 329 (1957).

A purchaser under a special improvements sale acquired superior rights to one purchasing under a municipal ad valorem tax sale. Shelton v. Reliance Inv. Co., 230 Miss. 51, 92 So. 2d 329 (1957).

2.-5. [Reserved for future use.]

II. Under Former Law.

6. In general.

Statute held to authorize mayor and city commissioners, after completion of paving, to institute proceeding for compliance with statute governing manner of assessment for paving, including giving notice and opportunity for hearing in making assessments. City of Clarksdale v. Fitzgerald, 181 Miss. 135, 179 So. 269 (1938).

Statute authorizing reassessment where assessment is invalid authorized municipality, where contract has been completed, to continue to undertake to levy assessments on notice until assessment is accomplished. City of Lexington v. Wilson's Estate, 170 Miss. 282, 151 So. 164 (1933).

Reassessment for improvement is an independent proceeding. City of Lexington v. Wilson's Estate, 170 Miss. 282, 151 So. 164 (1933).

Where appeal from reassessment by city's governing authority to circuit court was in compliance with statutes then in effect, circuit court did not lose jurisdiction to hear appeal because law respecting appeal was changed before appeal was heard. City of Lexington v. Wilson's Estate, 170 Miss. 282, 151 So. 164 (1933).

RESEARCH REFERENCES

Am Jur. 70C Am. Jur. 2d, Special or Local Assessment §§ 87-105.

9 Am. Jur. Pl & Pr Forms (Rev), Drains and Drainage Districts, Form 82 (drain, construction, notice to landowner of hearing for assessment).

22 Am. Jur. Pl & Pr Forms (Rev), Special or Local Assessments, Form 50 (notice of appeal to legislative body from special assessment).

22 Am. Jur. Pl & Pr Forms (Rev), Special or Local Assessments, Forms 61 et seq. (grounds of appeal for relief from assessment or its enforcement).

CJS. 63 C.J.S., Municipal Corporations §§ 1640 et seq.; 1671 et seq.

§ 21-41-17. Method of payment of assessments.

All special assessments levied under the provisions of this chapter, unless otherwise provided by the governing authorities, shall become due and shall be paid to the treasurer of the municipality, (or to the officer performing the duties of such treasurer) in full within ninety (90) days from the date of confirmation thereof. However, the governing authorities of the municipality may by resolution confer upon the property owners who admit the legality of the assessment the privilege of paying the assessment in not exceeding twenty (20) equal installments with interest from the date of the confirmation at the same rate as that fixed in the bonds issued to raise money to pay the cost of the said improvements, which is to be paid in whole or in part by the owners of property abutting to the proposed improvements. Any property owner who shall not have taken an appeal from the assessment, shall, upon failure to pay said assessment in full within ninety (90) days from the date of confirmation, be deemed to have elected to pay said assessment in installments as herein provided, and he shall be deemed to have admitted the legality of the assessment and shall thereby waive all right to contest the validity thereof. The installments of said assessment shall be due and payable at the same time that the annual municipal tax becomes due and payable commencing with the first municipal tax levy, which is payable after the expiration of ninety days from the date of confirmation of the assessment.

SOURCES: Codes, 1930, § 2564; 1942, § 3664-07; Laws, 1924, ch. 194; Laws, 1929, ch. 26; Laws, 1948, ch. 210; Laws, 1950, ch. 495, § 7; Laws, 1994, ch. 355, § 1, eff from and after July 1, 1994.

Cross References — Certification and collection of assessment, and interest thereon, see § 21-41-19.

Noting of payments, see § 21-41-21.

Delinquencies, see § 21-41-27.

Lien of drainage district not being abated by tax sale to state, see § 29-1-97.

Provision of funds for debt service with respect to special improvement bonds issued by a joint water management district, see § 51-8-45.

RESEARCH REFERENCES

Am Jur. 70A Am. Jur. 2d, Special or Local Assessments §§ 216-224.

16A Am. Jur. Legal Forms 2d, Special or Local Assessments § 236:25 (payment of assessment).

CJS. 63 C.J.S., Municipal Corporations § 1736 et seq.

§ 21-41-19. Certification and collection of assessment; interest thereon.

The governing authorities shall annually certify to the tax collector, or other officer charged with the duty of collecting taxes in the municipality, the annual installment of assessment due from each tract of land against which an assessment has been levied, together with the amount of the interest upon all unpaid installments at the same rate as that fixed in the bonds issued to raise money to pay the cost of the said improvements, which is to be paid in whole or in part by the owners of property abutting to the proposed improvements. In the event no bonds are issued to raise money to pay the cost of the said improvements, which is to be paid in whole or in part by the owners of property abutting to the proposed improvements, then the said assessments shall bear a rate of interest not to exceed six per centum per annum, and shall be fixed by the governing authorities of the municipality making such improvements at the time when the said assessments are made final. In the event any municipality has made assessments for special improvements authorized by law and there are special improvement bonds outstanding which are paid by special assessments levied against property abutting the streets so improved, the governing authorities of such municipality shall change the interest on such assessments to equal the rate of interest fixed in such bonds and such change shall become effective on the date the governing authorities take such action and shall not be retroactive. Any property owner who has elected to pay his assessment in installments shall have the right at any time to pay the balance of the assessment against his property in full, but in so doing he shall be required to pay all interest which would have accrued thereon had same not been paid until its maturity.

The collector shall thereupon enter upon the annual tax roll of the municipality, in a separate column, the amount of the installment and interest to be collected from each tract of land assessed, and said collector shall collect said installment, together with the interest upon all unpaid installments, together with, and at the same time he collects the annual municipal tax.

SOURCES: Codes, 1930, § 2564; 1942, § 3664-07; Laws, 1924, ch. 194; Laws, 1929, ch. 26; Laws, 1948, ch. 210; Laws, 1950, ch. 495, § 7, eff from and after July 1, 1950.

Cross References — Method of payment of assessment, see § 21-41-17.

Noting of payments, see § 21-41-21.

Delinquencies, see § 21-41-27.

Change or division of assessment, see § 21-41-33.

Provision of funds for debt service with respect to special improvement bonds issued by a joint water management district, see § 51-8-45.

RESEARCH REFERENCES

Am Jur. 70C Am. Jur. 2d, Special or Local Assessments §§ 168-171, 216-219.

16B Am. Jur. Legal Forms 2d, Special or Local Assessments §§ 236:25 (payment of assessment).

22 Am. Jur. Pl & Pr Forms (Rev), Special or Local Assessments, Form 42 (complaint petition or declaration to enjoin collection of special assessments for parking lot improvement).

22 Am. Jur. Pl & Pr Forms (Rev), Special or Local Assessments, Form 43 (complaint petition or declaration in class action to restrain special assessment of abutting property for street improvements).

CJS. 63 C.J.S., Municipal Corporations §§ 1645 et seq., 1742, 1745 et seq.

§ 21-41-21. Noting of payments.

The treasurer shall immediately report to the clerk of the municipality, or to the officer performing the duties of such clerk, any assessment paid in full. The collector shall annually report to the clerk of the municipality, or to the officer performing the duties of such clerk, the installments paid in that year. The clerk of the municipality, or the officer performing the duties of such clerk, shall note such payments on the "assessment book for local improvements." When an assessment is paid in full, or upon the payment of the last installment thereof, the clerk shall note on said "assessment book for local improvements" opposite the assessment, "paid in full." Upon the payment of each installment an appropriate note thereof shall be made opposite such assessment on said book, so that the amount of the assessment against any property assessed under the provisions of this chapter, which remains a lien upon said property may be determined by reference to the "assessment book for local improvements."

SOURCES: Codes, 1930, § 2564; 1942, § 3664-07; Laws, 1924, ch. 194; Laws, 1929, ch. 26; Laws, 1948, ch. 210; Laws, 1950, ch. 495, § 7, eff from and after July 1, 1950.

Cross References — Method of payment of assessment, see § 21-41-17.

Certification and collection of assessment, and interest thereon, see § 21-41-19.

Delinquencies, see § 21-41-27.

Provision of funds for debt service with respect to special improvement bonds issued by a joint water management district, see § 51-8-45.

RESEARCH REFERENCES

CJS. 63 C.J.S., Municipal Corporations § 1736.

§ 21-41-23. Repealed.

Repealed by Laws, 1994, ch. 355, § 2, eff from and after July 1, 1994.

[Codes, 1942, § 3664-15; Laws, 1931, ch. 19; Laws, 1934, ch. 322; Laws, 1950, ch. 495, § 15]

Editor's Note — Former § 21-41-23 provided for the extension of time for paying municipal assessments for special local improvements.

§ 21-41-25. Assessments to be enforced and collected as are other taxes.

All assessments levied under the provisions of this chapter shall be enforced in the same manner in which the payment of other taxes in said municipality is enforced, and all statutes regulating the collection of other taxes in said municipality shall apply to the enforcement and collection of the assessments levied under the provisions of this chapter.

SOURCES: Codes, 1930, § 2565; 1942, § 3664-08; Laws, 1924, ch. 194; Laws, 1929, ch. 26; Laws, 1934, ch. 246; Laws, 1950, ch. 495, § 8, eff from and after July 1, 1950.

Cross References — Sales of property for nonpayment of taxes, see § 21-33-63.

Delinquencies, see § 21-41-27.

Redemption in whole, see § 21-41-29.

Redemption in part, see § 21-41-31.

Change or division of assessment, see § 21-41-33.

Provision of funds for debt service with respect to special improvement bonds issued by a joint water management district, see § 51-8-45.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

Equity follows law in allowing city to maintain paramount lien for special improvements against purchaser at ad valorem tax sale. Seward v. City of Jackson, 165 Miss. 478, 144 So. 686 (1932).

Purchaser at city's ad valorem tax sale takes title subject to city's lien for special improvement assessment installments. Seward v. City of Jackson, 165 Miss. 478, 144 So. 686 (1932).

Statutes construed as not freeing title acquired at city's sale for ad valorem taxes from lien for special improvement assessment do not violate constitutional provision requiring uniform and equal taxation. Seward v. City of Jackson, 165 Miss. 478, 144 So. 686 (1932).

Statutes construed as not freeing title acquired at city's sale for ad valorem taxes from lien for special improvement assessment do not violate constitutional provision respecting laws exempting property from taxation. Seward v. City of Jackson, 165 Miss. 478, 144 So. 686 (1932).

ATTORNEY GENERAL OPINIONS

Purchaser of property sold for failure of record titleholder to pay special assessments for street and curb improvements is entitled to tax deed subject to lien for all unmatured installments if property is not redeemed within two year redemption period. Chaffin, July 22, 1992, A.G. Op. #92-0528.

Municipality may not engage collection agent or private attorney for collection of unpaid taxes or unpaid special assessments. Navarro Sept. 8, 1993, A.G. Op. #93-0618.

The lien of special assessments under Chapter 41, Title 21, is enforceable in the same manner as the lien of ad valorem taxes under other statutes. Baker, Dec. 5, 1997, A.G. Op. #97-0750.

RESEARCH REFERENCES

Am Jur. 70C Am. Jur. 2d, Special or Local Assessments §§ 180-206.

7 Am. Jur. Legal Forms 2d, Drains and Drainage Districts §§ 92:61-92:63 (assessments).

22 Am. Jur. Pl & Pr Forms (Rev), Special or Local Assessments, Forms 31-37 (enforcement of assessment or lien).

CJS. 63 C.J.S., Municipal Corporations § 1745 et seq.

§ 21-41-27. Delinquencies.

All assessments levied under the provisions of this chapter and the annual installments thereof shall become delinquent at the same time municipal ad valorem taxes become delinquent. Delinquent installments shall be collected in the same manner and at the same time delinquent ad valorem taxes are collected. Said delinquent installments shall bear the same penalties as those provided for delinquent taxes, and the penalties shall be upon the installment, or installments then delinquent. When any installment of the assessment shall become delinquent, if the property is sold for the non-payment of said delinquent installment, it shall be sold in the manner that property is sold for the non-payment of delinquent ad valorem taxes.

SOURCES: Codes, 1930, §§ 2564, 2565; 1942, §§ 3664-07, 3664-08; Laws, 1924, ch. 194; Laws, 1929, ch. 26; Laws, 1934, ch. 246; Laws, 1948, ch. 210; Laws, 1950, ch. 495, §§ 7, 8, eff from and after July 1, 1950.

Cross References — Sales of property for nonpayment of taxes, see § 21-33-63.

Method of payment of assessment, see § 21-41-17.

Certification and collection assessment, and interest thereon, see § 21-41-19.

Noting of payments, see § 21-41-21.

Enforcement and collection of assessment, see § 21-41-25.

Redemption in whole, see § 21-41-29.

Redemption in part, see § 21-41-31.

Lien of drainage district not being abated by tax sale to state, see § 29-1-97.

Provision of funds for debt service with respect to special improvement bonds issued by a joint water management district, see § 51-8-45.

ATTORNEY GENERAL OPINIONS

Purchaser of property sold for failure of record titleholder to pay special assessments for street and curb improvements is entitled to tax deed subject to lien for all unmatured installments if property is not redeemed within two year redemption period. Chaffin, July 22, 1992, A.G. Op. #92-0528.

RESEARCH REFERENCES

ALR. Effect of certificate, statement (or refusal thereof), or error by tax collector or other public officer regarding unpaid taxes or assessments against specific property. 21 A.L.R.2d 1273.

Am Jur. 70C Am. Jur. 2d, Special or Local Assessments §§ 171-206, 216-219.

CJS. 63 C.J.S., Municipal Corporations § 1743.

§ 21-41-29. Redemption in whole.

The owner of property sold for delinquent assessments, or any other party interested in said property, shall have the right to redeem, upon the payment of the principal amount of the installment or installments then delinquent, and the penalties on such delinquent installment or installments as provided for delinquent taxes. Failure to redeem within two years shall vest the title in the purchaser at said sale, subject to the lien of any and all unmatured installments. Such redemption shall not discharge said property from the lien of unmatured assessments levied thereon, and said property shall remain subject to such lien as if no sale thereof had been made.

SOURCES: Codes, 1930, § 2565; 1942, § 3664-08; Laws, 1924, ch. 194; Laws, 1929, ch. 26; Laws, 1934, ch. 246; Laws, 1950, ch. 495, § 8, eff from and after July 1, 1950.

Cross References — Right of redemption for two years being guaranteed, see Miss. Const Art. 4, § 79.

Sales of property for nonpayment of taxes, see § 21-33-63.

Enforcement and collection of assessment, see § 21-41-25.

Delinquencies, see § 21-41-27.

Redemption in part, see § 21-41-31.

Redemption of land sold for county taxes, see §§ 27-45-1 et seq.

Provision of funds for debt service with respect to special improvement bonds issued by a joint water management district, see § 51-8-45.

ATTORNEY GENERAL OPINIONS

Purchaser of property sold for failure of record titleholder to pay special assessments for street and curb improvements is entitled to tax deed subject to lien for all unmatured installments if property is not redeemed within two year redemption period. Chaffin, July 22, 1992, A.G. Op. #92-0528.

RESEARCH REFERENCES

Am Jur. 70C Am. Jur. 2d, Special or Local Assessments § 205.

§ 21-41-31. Redemption in part.

If there exists upon a portion of a tract of land sold for delinquent assessments, a lien either of a deed of trust or mortgage of any kind, or if a portion of a tract of land sold for said delinquent assessments is owned by one who does not own the entire portion sold, then, subject to the provisions herein stated, the mortgagee or holder of the notes secured by such deed of trust, or the owner of such portion, or any person interested in such real estate, may redeem that portion of the land so sold in solido, upon which portion such mortgagee or owner of notes, or owner of less than the whole of the real estate is interested, in the following manner, to-wit:

Such mortgagee, or owner of notes secured by deed of trust, owner, or other person interested, may apply in writing to the municipal clerk within the time provided by law for redemption from sale of taxes to be permitted to redeem such portion of such entire tract so sold in solido in which he is interested. Upon the application being filed with him, it shall be the duty of the municipal clerk to give ten days' notice in writing of such application by registered mail to the last known post office address, with return receipt requested, to the owner and to the purchaser at the tax sale, and to all persons holding mortgages or other liens of record on the land so sold in solido, or any part thereof, which notice shall designate a time not less than ten days from the mailing thereof when the governing authorities of the municipality shall hear and perform the duties hereinafter provided for. The clerk shall enter on the record of such tax sale notations giving the date when such notices were mailed, and the names and post office addresses of persons to whom mailed. On the date named for such hearing the governing authorities shall make such investigation as they may deem necessary to ascertain the relative value which that portion of land on which the lien of such mortgage or deed of trust is held by the applicant, or of which said applicant may be the owner, or otherwise interested, bears to the value of the entire land sold in solido for special assessment, and whether or not that portion not sought to be redeemed will remain adequate security for any assessment thereon. Should the governing authorities of the municipality determine from such investigation that that portion not sought to be redeemed will be adequate security and the interest of the municipality not adversely affected by permitting less than the whole to be redeemed, then they shall so adjudicate and fix and determine the amount of special improvement assessments which should be applied to each separate portion. The mortgagee or holder of the deed of trust, or owner, or any person interested in such real estate, shall thereupon be entitled to redeem that part of the land so sold by payment of the sum fixed thereon by such governing authorities, regardless of the amount of the purchaser's bid at the tax sale, with its proportionate part calculated as above provided of all costs, damages and interest consequent upon the sale, and also all subsequent instalments which have accrued prior to the date of said redemption, together with all municipal ad valorem taxes that have accrued upon that portion of said land being redeemed, apportioned in the manner hereinabove provided, and together with interest thereon at the rate of one per centum per month, or any fractional part thereof, from the dates such installments and taxes shall have accrued. If the sale was made to an individual purchaser, the municipality shall upon such redemption, refund to the purchaser the proportionate amount because of said redemption, which shall in nowise affect the purchaser's rights in so far as that portion which was not redeemed is concerned. Likewise, upon such redemption of less than the whole, in case of sale to the municipality, the municipality's rights in so far as that portion not redeemed are concerned, shall not be in anywise affected.

The decision of the governing authorities as to the right to redeem less than the whole shall be final. Any aggrieved party shall have the right to appeal as in other cases.

SOURCES: Codes, 1942, §§ 3664-09; 3664-11; Laws, 1934, ch. 246; Laws, 1950, ch. 495, §§ 9, 11, eff from and after July 1, 1950.

Cross References — Right of redemption for two years being guaranteed, see Miss. Const. Art. 4, § 79.

Redemption in whole, see § 21-41-29.

Change or division of assessment, see § 21-41-33.

Redemption of land sold for county taxes, see §§ 27-45-1 et seq.

Provision of funds for debt service with respect to special improvement bonds issued by a joint water management district, see § 51-8-45.

§ 21-41-33. Change or division of assessment.

If, after the original assessment shall have been made, a portion of any lot or parcel of land which is assessed in solido, shall have changed ownership so that no one person is the owner of the entire lot or parcel of land so assessed in solido, then any such owner, or other party interested therein, may apply to the municipal authorities for a change or division of the assessment. Such application shall be in writing, filed with the municipal clerk, and the same notice and procedure shall be had thereon as is provided for the redemption of less than the whole when sold for delinquent installments. If the governing authorities are satisfied from their investigation that the land in each instance will be adequate security for the assessment placed thereon, and that the rights of the municipality will be in no wise injuriously affected, they may by appropriate order change or divide the assessments according to the ownership of the land so assessed.

The decision of the governing authorities as to the right to change or divide assessments shall be final. Any aggrieved party shall have the right to appeal as in other cases.

SOURCES: Codes, 1942, §§ 3664-10, 3664-11; Laws, 1934, ch. 246; Laws, 1950, ch. 495, §§ 10, 11, eff from and after July 1, 1950.

Cross References — Redemption in part, see § 21-41-31.

Provision of funds for debt service with respect to special improvement bonds issued by a joint water management district, see § 51-8-45.

RESEARCH REFERENCES

Am Jur. 70C Am. Jur. 2d, Special or Local Assessments § 134 et seq.

CJS. 63 C.J.S., Municipal Corporations §§ 1704 et seq.

§ 21-41-35. Correction of imperfect assessments.

If any special assessment made pursuant to this chapter or attempted to be made in accordance with or by virtue of the authority conferred in any other law heretofore in force, to defray the whole or any part of the expense of any local improvement, shall be, either in whole or in part, annulled, vacated or set aside by the judgment of any court, or if the governing authorities of a municipality shall be satisfied that such assessment is so irregular or defective that the same cannot be enforced, or if the governing authorities shall have omitted to make such assessment when it might have done so, the governing authorities of the municipality are hereby authorized to take all steps to cause a new assessment for the whole or any part of any improvement, or against any property benefited by any improvement, following as near as may be the provisions of this chapter. In case such second assessment shall likewise be abrogated as above provided, the governing authorities may make other assessments, until a valid assessment shall be made.

SOURCES: Codes, 1942, § 3664-12; Laws, 1934, ch. 246; Laws, 1950, ch. 495, § 12, eff from and after July 1, 1950.

Cross References — Provision of funds for debt service with respect to special improvement bonds issued by a joint water management district, see § 51-8-45.

RESEARCH REFERENCES

Am Jur. 70C Am. Jur. 2d, Special or Local Assessments §§ 131-134.

§ 21-41-37. Correction of errors or irregularities in estimate of cost.

If any municipality in this state, including those operating under a special charter, having the power to construct or cause to be made improvements consisting of grading, paving, graveling or any other form of improvement to its streets, avenues, alleys, sidewalks, gutters, sewerage or drainage, has levied or assessed or charged the cost thereof against the property abutting thereon and to the owners thereof, and has paid such cost and has not been paid therefor in full, and if in the judgment of the governing authorities of said municipalities, errors or irregularities have occurred in the assessing or computing of such cost, then such municipality is hereby authorized and empowered to ascertain the cost thereof and to add thereto accrued and unpaid interest, and to declare the same by resolution, and to correct errors or irregularities in said former assessment or assessments accordingly. In no event, however, shall the principal amount thereof, exclusive of interest, be increased.

When such errors or irregularities have been corrected, the assessment or assessments so made, and all steps and proceedings leading up thereto or precedent thereto are hereby confirmed and validated for all purposes and against all persons, and said assessment or assessments shall be in lieu of the assessment or assessments in which said errors or irregularities have been made or occurred. Such further proceedings may be had thereon to provide for and fix a lien on said property to secure the payment of said assessment or assessments, and for enforcing the collection thereof, and otherwise, in the same manner as is provided in this chapter, when valid assessments have been made that are not erroneous or irregular.

All orders, resolutions, ordinances, and proceedings relative to sidewalk, curb, or gutter improvements heretofore passed and adopted by any such municipality or its governing authorities, are hereby in all things made valid and binding regardless of defects or omissions or informalities or the failure to comply with any law or part of law relative thereto.

If and when it shall have been determined by said governing authorities that an over-assessment shall have been made against such person or property, such governing authorities are hereby authorized and empowered to give credit for or refund the amount of such excess.

SOURCES: Codes, 1942, § 3664-13; Laws, 1936, ch. 285; Laws, 1950, ch. 495, § 13, eff from and after July 1, 1950.

Cross References — Provision of funds for debt service with respect to special improvement bonds issued by a joint water management district, see § 51-8-45.

§ 21-41-39. Irregularity of proceeding shall not invalidate assessment.

No omission, informality or irregularity in the proceedings in, or preliminary to, the making of any special assessment shall affect the validity of the same, where the assessment roll has been confirmed by the governing authorities. The assessment roll and the record thereof kept by the city clerk shall be competent and sufficient evidence that the assessment was duly levied and the assessment rolls duly made and adopted, and that all other proceedings incident to the adoption of said assessment roll were duly had, taken and performed as required by this chapter. However, no assessment shall be valid and legal unless the notice required by this chapter shall have been given.

SOURCES: Codes, 1930, § 2567; 1942, § 3664-16; Laws, 1924, ch. 194; Laws, 1950, ch. 495, § 16, eff from and after July 1, 1950.

Cross References — Provision of funds for debt service with respect to special improvement bonds issued by a joint water management district, see § 51-8-45.

JUDICIAL DECISIONS

1.-5. [Reserved for future use.]
6. Under former law.

1.-5. [Reserved for future use.]

6. Under former law.

Statute providing that irregularity of proceeding shall not invalidate assessment, does not apply when taxpayer has prosecuted appeal from assessment, and not until assessment has become final. Lexington v. Wilson's Estate, 170 Miss. 282, 151 So. 164 (1933); Wilson v. City of Lexington, 153 Miss. 212, 121 So. 859 (1929), corrected, 155 Miss. 157, 124 So. 268 (1929).

§ 21-41-41. Borrowing money to make improvements.

The governing authorities of every municipality in the state, which have heretofore or may hereafter declare their intention of authorizing any of the special improvements enumerated in Section 21-41-3, the cost of which is to be paid in whole or in part by the owners of property abutting to the proposed improvement, are authorized, in their discretion, to borrow money for said proposed improvement, including that portion of the cost thereof which is to be paid by the municipality and is not assessed against the property benefited, and to issue negotiable notes, certificates of indebtedness or special street improvement bonds therefor.

SOURCES: Codes, 1930, § 2570; 1942, § 3664-19; Laws, 1924, ch. 194; Laws, 1950, ch. 495, § 19, eff from and after July 1, 1950.

Cross References — Uniform system for issuance of negotiable notes or certificates of indebtedness, see § 17-21-51.

Issuance of municipal bonds generally, see §§ 21-33-301 et seq.

Maturation and interest of obligations issued to pay for special improvements, see § 21-41-43.

Obligations issued not exceeding cost of special improvements, see § 21-41-45.

§ 21-41-43. Maturation and interest of obligations; special improvement bond fund.

All obligations issued pursuant to Section 21-41-41 shall mature not longer than twenty (20) years from the date thereof, and shall be divided into approximately equal payments, with one (1) payment falling due each year. The obligations shall bear interest at a rate not exceeding that allowed in Section 75-17-101, payable annually or semiannually, and principal and interest on same shall be payable at such place within or without the state as may be designated by the issuing authorities at the time the obligations are issued. The full faith, credit and resources of the issuing municipality shall be pledged for the payment of the principal and interest on the obligations and the governing authorities of the municipality shall annually levy a tax on all taxable property in the municipality sufficient for such purposes, and where the obligations are issued for the purpose of making any of the special improvements set forth in this chapter, the cost of which is to be paid from assessments levied against the property abutting on the special improvement to be made under this chapter, the assessments shall also be pledged for the payment of the obligations. The funds derived from the taxes levied to pay the obligations shall be kept in a special fund to be known as the "Special Improvement Bond Fund," and shall be used only for the purpose of paying principal and interest on the obligations. All funds derived from special assessments levied against the property abutting on the special improvements shall likewise be placed into the Special Improvement Bond Fund and shall be used only for the purpose of paying principal and interest on the obligations. Any surplus funds may be invested as provided by law, and may be used to pay the obligations at or before maturity.

SOURCES: Codes, 1930, § 2572; 1942, § 3664-20; Laws, 1924, ch. 194; Laws, 1950; ch. 495, § 20; Laws, 1975, ch. 431; Laws, 1976, ch. 409; Laws, 1980, ch. 523, § 5; Laws, 1981, ch. 462, § 5; Laws, 1982, ch. 434, § 10; Laws, 1983, ch. 541, § 15; Laws, 1995, ch. 354, § 1, eff from and after July 1, 1995.

Cross References — Maturity and interest on municipal bonds, generally, see § 21-33-315.

Limitation on the maximum interest rate to maturity on obligations issued under the provisions of this section, see § 75-17-101.

§ 21-41-45. Obligations not to exceed cost of improvements; authorization and procedures for interim financing in anticipation of borrowing for local improvements.

(1) The obligations so authorized by Section 21-41-41 may be issued at any time after the estimated cost of the special improvements shall have been ascertained by the governing authorities of the municipality, and the amount of indebtedness thereby incurred shall not exceed the estimated cost of such special improvements.

(2) Any municipality which determines by resolution to borrow money under the authority of Section 21-41-41 may obtain interim financing in anticipation of such borrowing for one (1) or more of the local improvements authorized by Section 21-41-3 at any time after the estimated cost of each such improvement to be so financed has been ascertained. Such interim financing may be upon such terms and conditions and may bear interest at such rate or rates as are agreed between the municipality and the party advancing the interim funds or the purchaser of the obligations evidencing such indebtedness; provided, however, the maximum rate of interest thereon shall not exceed that established in Section 75-17-101, Mississippi Code of 1972.

(3) Such interim financing shall be secured by and repaid from the proceeds of the permanent financing issued under this chapter and may be further secured by any earnings on the investment of the proceeds of the interim financing.

(4) The final maturity of such interim financing shall not exceed three (3) years after the completion date of any improvement being financed, as certified by the city engineer. Provided, however, that if the governing authorities of the municipality, after a good faith effort, determine by resolution that permanent

financing under Section 21-41-41 cannot be obtained, the municipality may renew the interim financing for additional periods of six (6) months until such permanent financing can be obtained. The municipality may enter into agreements with one (1) or more lenders at any time obligating such lenders to provide renewal interim financing upon such terms and conditions as may be agreed by the municipality and the lenders.

(5) The same terms and conditions with respect to the giving of notice, presentation of petitions and holding of an election established in Sections 21-33-307 through 21-33-311, Mississippi Code of 1972, for the issuance of municipal bonds shall apply before a municipality may borrow money under the provisions of this section. Such borrowing shall be authorized by resolution of the governing authorities of the municipality and may be evidenced by a note or notes in negotiable form with coupons or fully-registered form without coupons. The indebtedness incurred hereunder shall not be considered when computing any limitation of indebtedness imposed by law on the municipality.

(6) Such borrowing, whether or not evidenced by a negotiable note or notes, may be placed or sold at public or private sale for such price, in such manner and at such time or times as may be determined by the governing authorities of the municipality. All expenses, premiums and commissions deemed necessary or advantageous in connection with the issuance thereof may be paid by the municipality.

(7) This section, without reference to any other statute, shall be deemed full and complete authority for the borrowing of such interim funds and the issuance of a note or notes to evidence such indebtedness, and shall be construed as an additional and alternative method therefor. None of the present restrictions, requirements, conditions or limitations of law applicable to the issuance or sale of bonds, notes or other obligations by municipalities shall apply to the borrowing of funds hereunder. No proceedings shall be required for the borrowing of such funds other than those provided for and required herein, and all powers necessary to be exercised in order to carry out the provisions hereof are hereby conferred.

SOURCES: Codes, 1930, § 2573; 1942, § 3664-21; Laws, 1924, ch. 194; Laws, 1950, 495, § 21; Laws, 1987, ch. 414, § 2, eff from and after July 1, 1987.

Cross References — Interest on interim financing being deemed part of cost of improvements, see § 21-41-11.

§ 21-41-47. Obligations excepted from the limitations of indebtedness.

All bonds, notes or other obligations heretofore or hereafter issued by the municipalities of the state, for so much of the cost of the local improvements as shall have been or shall be assessed against property specially benefited by said improvements or shall have been paid for by said issuing municipality, shall be excepted from any limitations of indebtedness prescribed by the special charters of such municipalities or by any special or general law, and said bonds, notes or other obligations shall not be considered indebtedness of said municipalities in applying said limitations of indebtedness. It shall not be necessary for any municipality to secure the approval of its qualified electors to borrow the money or issue its obligations incurred in the doing of such local improvements, but such acts may be done without an election and without giving notice of intention to do so.

SOURCES: Codes, 1930, § 2578; 1942, § 3664-22; Laws, 1924, ch. 194; Laws, 1950, ch. 495, § 22, eff from and after July 1, 1950.

Cross References — Limitation on bonded indebtedness of municipality, see § 21-33-303.

Municipal tax levy for general revenue and improvements with exception for special purposes, see § 27-39-307.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 573.

§ 21-41-49. Refunding special assessment bonds.

Where any municipality has issued bonds for special improvements, and special assessments have been levied to pay for said bonds, or wherein the municipality was to have paid a portion or all of said bonds under any special improvement law by which said bonds were issued, and said installments for special improvements have not been collected, or funds for the payment of said bonds are not on hand, such municipality is hereby authorized to issue refunding bonds in the manner provided by general law for the refunding of bonds by municipalities.

SOURCES: Codes, 1930, § 2566; 1942, § 3664-14; Laws, 1931, ch. 19; Laws, 1950, ch. 495, § 14, eff from and after July 1, 1950.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations §§ 198-204.

§ 21-41-51. Method of publishing notice.

Except as may be otherwise provided, where, by any provision of this chapter, notice is required to be given by publication, such publication made shall be in a newspaper published in the municipality, if there be one. If there be no newspaper published in the municipality, then such notice shall be posted for the prescribed period of time in at least five public places in the municipality, one of which shall be the city or town hall, or the place of meeting of the governing authorities, if there be no city or town hall.

SOURCES: Codes, 1930, § 2569; 1942, § 3664-18; Laws, 1924, ch. 194; Laws, 1950, ch. 495, § 18, eff from and after July 1, 1950.

ATTORNEY GENERAL OPINIONS

As between qualified newspapers, a newspaper with a known office of publication within the municipality must be selected to publish the legal notices of that municipality. Edens, July 23, 1999, A.G. Op. #99-0289.

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

Am Jur. 70C Am. Jur. 2d, Special or Local Assessments §§ 154, 155.

18A Am. Jur. Pl & Pr Forms (Rev), Notice, Form 1 (notice, general form).

18A Am. Jur. Pl & Pr Forms (Rev), Notice, Forms 24, 25 (affidavit of notice by posting or publication).

1 Am. Jur. Proof of Facts 297, Advertisements.

8 Am. Jur. Proof of Facts 487, Newspapers.

§ 21-41-53. Contracts for work to be let as other contracts for public work.

All work upon the improvements authorized by Section 21-41-3, shall be undertaken and contracts therefor, if any, shall be let and awarded in the manner provided by the law or the charter of the municipality.

SOURCES: Codes, 1930, § 2568; 1942, § 3664-17; Laws, 1924, ch. 194; Laws, 1950, ch. 495, § 17, eff from and after July 1, 1950.

Cross References — Invalidity of "hold harmless" clauses in public and private construction contracts, see § 31-5-41.

CHAPTER 43

Business Improvement Districts

General provisions 21-43-1
Business Improvement Districts Act 21-43-101

GENERAL PROVISIONS

Sec.
21-43-1. Power to impose tax on businesses in certain municipalities; purposes for which proceeds may be used.
21-43-3. Definitions.
21-43-5. Advisory boards.
21-43-7. Resolution of intention.
21-43-9. Notice of hearing.
21-43-11. Procedure at hearing.
21-43-13. Change of boundaries of proposed area.
21-43-15. Ordinance establishing area.
21-43-17. Classification of businesses for tax purposes; exemption of new businesses.
21-43-19. Collection and use of tax; changes.
21-43-21. Disestablishment of area.
21-43-23. Disposition of taxes or assets after disestablishment.

§ 21-43-1. Power to impose tax on businesses in certain municipalities; purposes for which proceeds may be used.

The governing authority of any municipality in a county bordering on the Gulf of Mexico having therein a family court, and the governing authority of any municipality in any county having a population in excess of thirty-eight thousand (38,000) according to the 1980 decennial census and bordering on the Mississippi River wherein United States Highways 61 and 84 intersect are authorized, in their discretion, to impose a tax on businesses within a parking and business improvement area which is in addition to the general business privilege license tax, and to use such proceeds for the following purposes:

(a) The acquisition, construction or maintenance of parking facilities for the benefit of the area.

(b) Decoration of any public place in the area.

(c) Promotion of public events which are to take place on or in public places in the area.

(d) Furnishing of music in any public place in the area.

(e) The general promotion of retail trade activities in the area.

(f) The construction and maintenance of air-conditioning facilities for the benefit of the area.

SOURCES: Laws, 1974, ch. 520, § 1; Laws, 1984, ch. 473, § 2, eff from and after passage (approved May 10, 1984).

Editor's Note — Laws of 1999, ch. 432, § 1, provides that:

"SECTION 1. From and after the date Laws of 1999, ch. 432, is effectuated under Section 5 of the Voting Rights Act of 1965, all family courts are abolished. All matters pending in any family court abolished shall be transferred to the county court of the county wherein the family court was located without the necessity for any motion or order of court for such transfer."

On May 28, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the enactment of Laws of 1999, ch. 432.

Cross References — Privilege taxes generally, see §§ 27-15-1 et seq. and §§ 27-17-1 et seq.

Municipal parking facilities generally, see §§ 21-37-23 through 21-37-31.

Off-street parking and business district renewal, see §§ 43-35-201 et seq.

§ 21-43-3. Definitions.

"Parking and business improvement area" or "area" as used in this chapter shall mean an area designated as provided in this chapter.

"Business" as used in this chapter shall mean all types of business, including professions.

SOURCES: Laws, 1974, ch. 520, § 2, eff from and after July 1, 1974.

§ 21-43-5. Advisory boards.

The governing authority of any participating municipality shall appoint an advisory board consisting of five (5) members who shall serve at the pleasure of the appointing authority; such board members shall be professional businessmen within the affected area; and such board shall have the sole discretion as to how the revenue derived from the tax is to be used within the scope of the purposes as provided in Section 21-43-1.

SOURCES: Laws, 1974, ch. 520, § 3, eff from and after July 1, 1974.

§ 21-43-7. Resolution of intention.

A parking and business improvement area may be established whenever the governing authority of any municipality shall by resolution establish such an area. The resolution shall contain the following information:

(a) description of the boundaries of the proposed area;

(b) the time and place of a hearing to be held to consider establishment of an area;

(c) the proposed uses to which the additional revenue shall be put; and

(d) the initial rate of increase, or additional levy, of the license privilege tax, with a breakdown by class of business if such classification is to be used.

SOURCES: Laws, 1974, ch. 520, § 4(1), eff from and after July 1, 1974.

§ 21-43-9. Notice of hearing.

Notice of the hearing shall be given by:

(a) One (1) publication of the resolution of intention in a newspaper of general circulation in the municipality, which may be made as provided in Section 21-17-19;

(b) Mailing a complete copy of the resolution of intention to each business in the proposed or established area. Publication and mailing shall be completed at least ten (10) days prior to the time of the hearing.

SOURCES: Laws, 1974, ch. 520, § 4(2); Laws, 1988 ch. 457, § 10, eff from and after December 8, 1988 (the date the United States Attorney General interposed no objection to the amendment).

§ 21-43-11. Procedure at hearing.

Whenever a hearing is held under this chapter, the governing authority of any municipality shall hear all protests and receive evidence for or against the proposed action; rule upon all protests which determination shall be final; and may continue the hearing from time to time. Proceedings shall terminate if protest is made by businesses in the proposed area which pay a majority of the taxes within the area under the general business privilege license tax.

SOURCES: Laws, 1974, ch. 520, § 4(3), eff from and after July 1, 1974.

§ 21-43-13. Change of boundaries of proposed area.

If the governing authority decides to change the boundaries of the proposed area, the hearing shall be continued to a time not less than fifteen (15) days after such decision and notice shall be given as provided in Section 21-43-9 stating the boundary amendments, but no resolution of intention is required.

SOURCES: Laws, 1974, ch. 520, § 4(4), eff from and after July 1, 1974.

§ 21-43-15. Ordinance establishing area.

If the governing authority, following the hearing, decides to establish the proposed area, it shall adopt an ordinance to that effect. This ordinance shall contain the following information:

(a) the number, date and title of the resolution of intention pursuant to which it was adopted;

(b) the time and place the hearing was held concerning the formation of such area;

(c) the description of the boundaries of such area;

(d) a statement that the businesses in the area established by the ordinance shall be subject to the provisions of the additional tax provided by this chapter;

(e) the initial rate of increase, or additional levy, of the privilege license tax to be imposed with a breakdown by classification of business, if such classification is used;

(f) a statement that a parking and business improvement area has been established; and

(g) the uses to which the additional revenue shall be put.

SOURCES: Laws, 1974, ch. 520, § 4(5), eff from and after July 1, 1974.

§ 21-43-17. Classification of businesses for tax purposes; exemption of new businesses.

For purposes of the additional tax to be imposed pursuant to this chapter, the governing authority may make a reasonable classification of businesses, giving consideration to various factors.

Businesses recently established in the area may be exempted from the tax imposed pursuant to this chapter for a period not exceeding one (1) year from the date they commenced business in the area.

SOURCES: Laws, 1974, ch. 520, § 5, eff from and after July 1, 1974.

§ 21-43-19. Collection and use of tax; changes.

(1) The collection of the tax imposed pursuant to this chapter shall be made at the same time and in the same manner as any other business privilege license tax.

(2) Changes may be made in the additional rate or levy or in the uses to which the additional revenue shall be put as specified in the ordinance establishing the area by ordinance adopted after a hearing before the governing authority.

The governing authority shall adopt a resolution of intention to change the additional rate or levy or the uses to which the additional revenue shall be put at least fifteen (15) days prior to the hearing required by this section. This resolution shall specify the proposed change and shall give the time and place of the hearing.

(3) The tax levied hereunder must be for the purposes specified in the ordinances and the proceeds shall not be used for any other purpose.

SOURCES: Laws, 1974, ch. 520, § 6, eff from and after July 1, 1974.

§ 21-43-21. Disestablishment of area.

The governing authority of any municipality may disestablish an area by ordinance after a hearing before such authority, and such authority shall adopt a resolution of intention to disestablish the area not less than fifteen (15) days prior to the hearing required by this section. The resolution shall state the time and place of the hearing.

SOURCES: Laws, 1974, ch. 520, § 7, eff from and after July 1, 1974.

§ 21-43-23. Disposition of taxes or assets after disestablishment.

Whenever an area has been disestablished, any remainder of taxes or acquired assets shall be subject to disposition as the advisory board shall determine.

SOURCES: Laws, 1974, ch. 520, § 8, eff from and after passage July 1, 1974.

BUSINESS IMPROVEMENT DISTRICTS ACT

Sec.

21-43-101. Short title.
21-43-103. Legislative findings of fact and declaration of intent.
21-43-105. Definitions.
21-43-107. Creation of business improvement districts authorized.
21-43-109. Zoning.
21-43-111. Initiation of efforts to form business improvement district.
21-43-113. Notice of meeting for development of district plan; requirements for approval of proposed plan; contents of proposed plan.
21-43-115. Voting upon proposed district plan.
21-43-117. Notice of hearing for review of proposed district plan; conduct of election upon proposed district plan; notice of election results; review of approved plan by mayor of municipality; disbursement of proceeds from assessment.
21-43-119. Requirements for approval of district plan; requirements for reauthorization, amendments of district plan or modification of boundaries.
21-43-121. Designation of district management group; fees and costs chargeable to district; contracts for specialty services.
21-43-123. Authorization of assessments for funding of district; lien for assessments; receipt of grants and donations by district.
21-43-125. Financing of improvements in districts.
21-43-127. Imposition and collection of assessment.
21-43-129. Custody and disbursement of proceeds of assessments; district fiscal year; permissible improvements.
21-43-131. Duration of initial authorization of district; requirements and procedure for reauthorization.
21-43-133. Dissolution of district.

§ 21-43-101. Short title.

Sections 21-43-101 through 21-43-133 shall be known and may be cited as the "Business Improvement District Act."

SOURCES: Laws, 1995, ch. 442, § 1, eff from and after passage (approved March 21, 1995).

ATTORNEY GENERAL OPINIONS

Business improvement district funds can contract as needed with outside third party sources for specialty services needed to implement the district plan. Clark, Mar. 30, 2001, A.G. Op. #01-0122.

A business improvement district may not grant a donation. Clark, Mar. 30, 2001, A.G. Op. #01-0122.

§ 21-43-103. Legislative findings of fact and declaration of intent.

The Legislature finds that:

(a) The business districts within many municipalities in the state are in a deteriorated condition;

(b) This deteriorated condition affects the economic and general welfare of the people of the State of Mississippi;

(c) Establishment of business improvement districts is an effective means for restoring and promoting business activity; and

(d) It is the intent of the Legislature to provide for a process for establishing these districts.

SOURCES: Laws, 1995, ch. 442, § 2, eff from and after passage (approved March 21, 1995).

§ 21-43-105. Definitions.

For the purposes of Sections 21-43-101 through 21-43-133 the following terms shall have the meanings ascribed herein unless the context shall otherwise require:

(a) "District" means a business improvement district established pursuant to Sections 21-43-101 through 21-43-133.

(b) "District management group" means an established and independent Mississippi non-profit corporation and may also include a local Chamber of Commerce, a downtown development corporation, a Main Street Project or a department of a local municipality as determined solely by a simple majority of the property owners included in the district.

(c) "District plan" means a set of goals and strategies as collectively determined by a majority of the property owners included in the district and as incorporated within Sections 21-43-101 through 21-43-133.

(d) "Improvements" means any capital project constructed within the public areas, with the approval of the municipality, for any business improvement district or services established under Sections 21-43-101 through 21-43-133 to improve the appearance or economic functioning of property located within the district including, but not limited to:

(i) Parks and related facilities;

(ii) Sidewalks, street curbing, street medians, planting areas, underground utilities, lighting standards or fountains;

(iii) Trees, shrubs, flowers or other vegetation;

(iv) Security services which may include assistance to public law enforcement through employment of private security personnel and the purchase of equipment or technology;

(v) Economic development services and assistance including, but not limited to, promotion of business, retail or industrial development developer recruitment, business recruitment, business marketing and business retention;

(vi) Parking management;

(vii) Street and sidewalk cleaning;

(viii) Recreational and/or cultural activities;

(ix) Training programs for employees of businesses within the district;

(x) Any other services, events or activities which will enhance the economic prosperity, enjoyment, appearance, image and safety of the district;

(xi) Refuse collection and disposal services;

(xii) The production and marketing of special events and festivals;

(xiii) Management of public facilities;

(xiv) Fire prevention services;

(xv) Water and sewer system enhancement;

(xvi) Drainage enhancements;

(xvii) Signage installation and removal;

(xviii) Planning studies;

(xix) Marketing studies;

(xx) Tourism development services; and

(xxi) Collective community child care centers.

(e) "Property owner" means that person or persons, entity or entities possessing a majority of the ownership interest in a piece of taxable real property.

(f) "Tax exempt properties" means properties which are exempt from certain real property taxes pursuant to Section 27-31-1.

SOURCES: Laws, 1995, ch. 442, § 3, eff from and after passage (approved March 21, 1995).

ATTORNEY GENERAL OPINIONS

Business improvement district funds can contract as needed with outside third party sources for specialty services needed to implement the district plan. Clark, Mar. 30, 2001, A.G. Op. #01-0122.

Absent any procedures lawfully adopted by the governing authorities, a property owner may determine the method of submission of a ballot to the clerk, whether it be by personal delivery or delivery by a designated or appointed person or agent; similarly, it is a determination of the property owner how to document any designation or agency. Clark, Sept. 7, 2001, A.G. Op. #01-0535.

§ 21-43-107. Creation of business improvement districts authorized.

There is hereby authorized the creation of business improvement districts which shall be established in accordance with the procedures described in Sections 21-43-101 through 21-43-133.

SOURCES: Laws, 1995, ch. 442, § 4, eff from and after passage (approved March 21, 1995).

§ 21-43-109. Zoning.

All areas included in a business improvement district must be zoned for some use other than residential. Residential uses may be included if the property is zoned for commercial or industrial use and the property is not owner-occupied as a homestead. Properties comprising a business improvement district must be contiguous to the other properties to be benefited in the district with the exception of public streets, alleys, parks and other public rights-of-way and tax exempt properties within the district boundaries.

SOURCES: Laws, 1995, ch. 442, § 5, eff from and after passage (approved March 21, 1995).

§ 21-43-111. Initiation of efforts to form business improvement district.

Notice shall be given to the municipality in which the district is to be established when an effort is begun by a contiguous group of non-residentially zoned local property owners to form a business improvement district. Upon delivery of a petition to the clerk of the municipality, signed by at least twenty percent (20%) of the property owners in an area proposing to establish a business improvement district, efforts can begin to form a business improvement district pursuant to Sections 21-43-101 through 21-43-133.

SOURCES: Laws, 1995, ch. 442, § 6, eff from and after passage (approved March 21, 1995).

§ 21-43-113. Notice of meeting for development of district plan; requirements for approval of proposed plan; contents of proposed plan.

In order to establish a business improvement district, and upon establishment, every tenth year thereafter, those property owners which make up the area of the proposed district shall be notified of a meeting by United States mail no less than ten (10) days prior to the scheduled date of the meeting. Notification shall include the specific location, date and time of the meeting. The goal of the meeting shall be to develop a district plan for the upcoming ten-year period. Such plan shall be agreed upon by a majority of those property owners in attendance at the meeting. Such district plan shall include the following:

(a) A description of the boundaries of the district sufficient to identify the lands included;

(b) The improvements proposed and the maximum cost thereof for each of the coming ten (10) years;

(c) The total amount proposed to be expended for improvements for and in the district during the upcoming ten (10) years;

(d) The proposed source or sources of financing and funding for the improvements;

(e) The proposed target dates for beginning the implementation of the improvements;

(f) The naming of the district management group for the upcoming ten (10) years; and

(g) A listing of the individual properties to be included in the district with any assessment computed and identified for each property based upon gross square footage of buildings and unimproved real estate. The plan may provide that tax exempt properties be included in the district but not be subject to any assessment.

SOURCES: Laws, 1995, ch. 442, § 7; Laws, 2012, ch. 373, § 4, eff from and after July 1, 2012.

ATTORNEY GENERAL OPINIONS

The statute contains no definition of the term "submit" and, therefore, the method to be used is left up to each individual property owner, absent any procedures lawfully adopted by the municipal governing authorities. Clark, Sept. 7, 2001, A.G. Op. #01-0535.

§ 21-43-115. Voting upon proposed district plan.

All property owners of record in the proposed district as of the date of initial notice given as provided in Section 21-43-111, shall be eligible to participate in the process to approve or reject the district plan and the proposed assessment for properties in the district. Votes of property owners within the proposed district shall be weighted in proportion to the amount of the assessment against properties in the district; provided, however, that in no case shall the total number of votes assigned to any one such property owner, through common ownership of property, be equal to more than one-third (1/3) of the total number of votes which may be cast.

SOURCES: Laws, 1995, ch. 442, § 8, eff from and after passage (approved March 21, 1995).

ATTORNEY GENERAL OPINIONS

The statute contemplates a procedure whereby a property owner may exercise a vote for each parcel owned, as long as, in counting the votes, each vote is weighted in proportion to the amount of the assessment against the properties of the business improvement district. Clark, Sept. 7, 2001, A.G. Op. #01-0535.

§ 21-43-117. Notice of hearing for review of proposed district plan; conduct of election upon proposed district plan; notice of election results; review of approved plan by mayor of municipality; disbursement of proceeds from assessment.

(1) For initial creation of the district, reauthorization of the district at the end of each ten-year period, amendment to the district plan within the ten-year plan period or modification of the boundaries of the district at the end of a ten-year period, the clerk of the municipality shall notify all property owners to be included in the proposed district of a public hearing to review the plan and receive comment about the process for accepting or rejecting the plan. Following a public hearing, the governing authority of the municipality shall set an election date not more than sixty (60) days from the date of the public hearing. The ballot shall clearly state the issue to be decided. Only property owners of record as of the date of initial notice given as provided in Section 21-43-111 shall be eligible to participate in any such election.

(2) Notice of an election to create, continue, amend or extend a district shall be:

(a) Mailed to each of the district property owners of record thirty (30) days prior to the election, and

(b) Published at least twice in a newspaper of general circulation in the municipality, the first publication shall be not less than ten (10), nor more than thirty (30) days before the date for the election. The notice shall include a copy of the plan, a ballot for the election and a notice about the time and date for the election.

(3) Not less than ten (10) nor more than thirty (30) days before the date set for the election, the governing authority of the municipality shall cause a copy of the plan and the ballot to be posted in the lobby of its city hall.

(4) Ballots shall be marked, signed and submitted by the eligible property owner to the clerk of the municipality by the date designated on the ballot.

(5) The clerk of the municipality shall notify the property owners in the district of the result.

(6) If the plan is approved by sixty percent (60%) of the participating eligible property owners, the mayor of the municipality shall review the district plan to ensure its compliance with the provisions of Sections 21-43-101 through 21-43-133.

(7) The municipality shall disburse the proceeds collected from the assessment to the designated district management group within thirty (30) days after the assessment is due.

SOURCES: Laws, 1995, ch. 442, § 9; Laws, 2012, ch. 373, § 1, eff from and after July 1, 2012.

ATTORNEY GENERAL OPINIONS

Absent lawfully adopted procedures, a property owner can choose the method of submission of a ballot to be used, which may include U.S. mail; however, a clerk may not accept ballots which are postmarked by that date, but received on a later date. Clark, Sept. 7, 2001, A.G. Op. #01-0535.

In the absence of procedures lawfully adopted by the municipal governing authorities, there is no requirement the ballots be placed in an envelope. Clark, Sept. 7, 2001, A.G. Op. #01-0535.

Absent any procedures lawfully adopted by the governing authorities, a property owner may determine the method of submission of a ballot to the clerk, whether it be by personal delivery or delivery by a designated or appointed person or agent; similarly, it is a determination of the property owner how to document any designation or agency. Clark, Sept. 7, 2001, A.G. Op. #01-0535.

§ 21-43-119. Requirements for approval of district plan; requirements for reauthorization, amendments of district plan or modification of boundaries.

A district plan shall be deemed adopted and ready for implementation upon written ballot approval by sixty percent (60%) of the participating eligible property owners in the district. Reauthorization, amendments of the district plan or modification of boundaries shall also be subject to written ballot approval by sixty percent (60%) of the participating eligible property owners.

SOURCES: Laws, 1995, ch. 442, § 10; Laws, 2012, ch. 373, § 2, eff from and after July 1, 2012.

Joint Legislative Committee Note — The second sentence of the section contained a typographical error. At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, in 2007, the error was corrected by changing the word "or" to "of" so that "Reauthorization, amendments or the district plan" now reads "Reauthorization, amendments of the district plan." The Joint Committee ratified the correction, pursuant to Section 1-1-109, at its August 5, 2008, meeting.

§ 21-43-121. Designation of district management group; fees and costs chargeable to district; contracts for specialty services.

(1) Each district established pursuant to the provisions of Sections 21-43-101 through 21-43-133, must designate in its district plan an existing local non-profit organization or department of local government as the district management group for execution of day to day activities for the district and for implementation of the district plan. Designation of the district management group shall be decided solely by the property owners affected by the creation of the district. Selection of a district management group shall be included in the district plan voted upon by the property owners in the district.

(2) Reasonable management fees, operational reimbursements, administrative costs and program implementation fees may be charged to the district by the district management group during the duration of an approved district plan.

(3) The district management group may, in its discretion, contract as needed with outside third party sources for specialty services needed to implement the district plan.

SOURCES: Laws, 1995, ch. 442, § 11, eff from and after passage (approved March 21, 1995).

ATTORNEY GENERAL OPINIONS

The statute authorizes a business improvement district management group to contract on behalf of the district with a private, nonprofit foundation to carry out special events and marketing efforts of the kind allowed by Section 21-43-105. Clark, Mar. 30, 2001, A.G. Op. #01-0122.

Business improvement district funds can contract as needed with outside third party sources for specialty services needed to implement the district plan. Clark, Mar. 30, 2001, A.G. Op. #01-0122.

§ 21-43-123. Authorization of assessments for funding of district; lien for assessments; receipt of grants and donations by district.

(1) A business improvement district may be funded in whole or in part by an assessment authorized pursuant to this section. Such assessment shall be in addition to any taxes or assessments that may be imposed on property that is included in the district.

(2) The assessment shall be levied on the property in the district based upon the gross square footage of the property. The district plan shall set the amount that shall be assessed on each square foot of property. A district plan may authorize that the assessment per square foot for buildings may be at a different rate than that for land; provided, however, that the square foot rate for each type of property shall be uniform.

(3) Upon presentation of a district plan by a district created pursuant to Sections 21-43-101 through 21-43-133, the governing authorities of a municipality shall, at the same time and in the same manner as ad valorem taxes are levied, levy the assessment provided for in this section on the property in the district in the amount specified in the district plan.

(4) Assessments shall constitute a lien upon the respective lots or parcels of land and other real property upon which they are levied, superior to all other liens except those for state and county taxes.

(5) In addition to the assessment authorized under this section, a business improvement district shall also be authorized and empowered to apply for and receive public and private grants and to accept any monetary contribution or donation of real or personal property.

SOURCES: Laws, 1995, ch. 442, § 12, eff from and after passage (approved March 21, 1995).

§ 21-43-125. Financing of improvements in districts.

The expenses incurred in the construction, designing, planning, marketing, administration or operation of any improvement in a district shall be financed in accordance with the district plan. Upon the establishment, reauthorization, amendment or extension of the district, property owners within the district shall be charged the assessment pursuant to the plan. Improvements must be in addition to or an enhancement of those provided to the district by the municipality prior to the establishment of the district.

SOURCES: Laws, 1995, ch. 442, § 13, eff from and after passage (approved March 21, 1995).

§ 21-43-127. Imposition and collection of assessment.

(1) The assessment upon benefited real property pursuant to Sections 21-43-101 through 21-43-133 shall be imposed as established in the district plan.

(2) The governing authorities of the municipality shall annually certify to the tax collector, or other officer charged with the duty of collecting taxes in the municipality, the annual installment of assessment due from each tract of land against which an assessment has been levied. The collector shall thereupon enter upon the annual tax roll of the municipality, in a separate column, the amount of the installment to be collected for each tract of land assessed, and the collector shall collect such installment at the same time he collects the annual municipal tax.

(3) All assessments levied under the provisions of Sections 21-43-101 through 21-43-133 shall be enforced in the same manner in which the payment of other municipal taxes is enforced, and all statutes regulating the collection of other municipal taxes shall apply to the enforcement and collection of the assessments levied under the provisions of Sections 21-43-101 through 21-43-133.

SOURCES: Laws, 1995, ch. 442, § 14, eff from and after passage (approved March 21, 1995).

§ 21-43-129. Custody and disbursement of proceeds of assessments; district fiscal year; permissible improvements.

The proceeds of any assessment imposed pursuant to an approved district plan shall be held by the chief fiscal officer of the municipality until disbursed to the designated district management group. A business improvement district shall operate on the same fiscal year as that of the municipality. None of the proceeds collected pursuant to Sections 21-43-101 through 21-43-133 shall be used for any purposes other than those set forth in the approved district plan. Improvements provided by a district using district funds may be undertaken only when the service, events, project or activity undertaken is not for the sole benefit of any particular property owner or other private party.

SOURCES: Laws, 1995, ch. 442, § 15, eff from and after passage (approved March 21, 1995).

§ 21-43-131. Duration of initial authorization of district; requirements and procedure for reauthorization.

The initial authorization for any business improvement district shall be for ten (10) years. During the last twelve (12) months of the tenth year of the authorization, a new district plan must be developed which meets all of the initial requirements of the district plan plus reauthorizes the district for another ten (10) years. Reauthorization requires the same approval process as initial establishment and authorization of the district. Should the district fail to receive reauthorization from the affected property owners in the district, the business improvement district will cease to exist at the conclusion of the most recently approved ten-year period or as soon thereafter as any outstanding indebtedness is satisfied. The ability to reauthorize rests solely with the affected property owners in the district.

SOURCES: Laws, 1995, ch. 442, § 16; Laws, 2012, ch. 373, § 3, eff from and after July 1, 2012.

ATTORNEY GENERAL OPINIONS

If a business improvement district is reauthorized during the last 12 months of the first five-year district plan, and a contract to carry out special events and marketing efforts of the kind allowed by Section 21-43-105 was entered into but had not expired and had not been completed or fulfilled, that contract can be carried over into the new five-year district plan if the contract's continuation and completion were made a part of the new plan and approved by the property owners as part of the reauthorization. Clark, Mar. 30, 2001, A.G. Op. #01-0122.

§ 21-43-133. Dissolution of district.

(1) Any district established or extended pursuant to the provisions in Sections 21-43-101 through 21-43-133, which has satisfied all indebtedness incurred to accomplish any of the purposes of the district, may be dissolved by the governing authority of the municipality upon:

(a) Written and certified petition from the property owners within the district who collectively represent more than seventy percent (70%) of the total assessed valuation of all benefited real property in the boundaries of the district, or

(b) The district plan terminates when no reauthorization has occurred as set forth in Sections 21-43-101 through 21-43-133.

(2) Upon dissolution of a business improvement district, any assets of the district remaining shall be transferred to the municipality.

SOURCES: Laws, 1995, ch. 442, § 17, eff from and after passage (approved March 21, 1995).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (2). The words "any assets of the district remain shall be transferred" were changed to "any assets of the district remaining shall be transferred". The Joint Committee ratified the correction at its May 20, 1998 meeting.

ATTORNEY GENERAL OPINIONS

As the statute contemplates that the business improvement district will cease to exist as soon after expiration of the five-year period as any outstanding indebtedness is satisfied, business improvement district funds may be used to pay for services already performed prior to the end of the plan but not yet paid for. Clark, Mar. 30, 2001, A.G. Op. #01-0122.

Dissolution is automatic pursuant to the statute when a business improvement district plan terminates and no reauthorization has occurred; however, if the district is reauthorized, then it is not dissolved and the funds do not lapse to the municipality; rather, if the funds were included in the new plan as it was adopted, approved, and reauthorized, the funds are carried over to the district under the new five-year plan. Clark, Mar. 30, 2001, A.G. Op. #01-0122.

CHAPTER 45

Tax Increment Financing

SEC.
21-45-1. Short title.
21-45-3. Definitions.
21-45-5. Relation to other laws; authority of municipalities to accept financial assistance and to enter into agreements with developers.
21-45-7. Division of ad valorem taxes according to tax increment financing plan.
21-45-9. Issuance of tax increment bonds; issuance of refunding bonds; agreements with developers.
21-45-11. Contents of tax increment financing plan; public hearing.
21-45-13. Security for principal, interest, and premium on tax increment bond.
21-45-15. Application of proceeds from sale of bonds.
21-45-17. Exemption from taxation.
21-45-19. Items which are included in cost of redevelopment project.
21-45-21. Assessment of value of real property described in tax increment financing plan; retention and distribution of captured assessed value; approval of redevelopment plan; certification of amount of sales tax collected.

§ 21-45-1. Short title.

This chapter may be cited as the "Tax Increment Financing Act."

SOURCES: Laws, 1986, ch. 449, § 1, eff from and after July 1, 1986.

Editor's Note — Laws of 1986, ch. 449, § 12, effective July 1, 1986, provides as follows:

"SECTION 12. It is the intent of the Legislature that the sections of this act shall be codified in sequence in a newly created chapter to be designated as Chapter 45, Title 21, Mississippi Code of 1972."

Cross References — Additional provisions relative to urban renewal, see §§ 43-35-1 et seq.

Additional provisions relative to slum clearance, see §§ 43-35-101 et seq.

Additional provisions relative to off-street parking and business district renewal, see §§ 43-35-201 et seq.

Provisions relative to designation of areas for development and redevelopment, see §§ 43-35-301 et seq.

Additional provisions relative to community development, see §§ 43-35-501 et seq.

ATTORNEY GENERAL OPINIONS

Use of portion of proceeds of tax incremental financing bonds for purposes stated in your letter of on-site grading to direct storm water toward rear of redevelopment project site and away from Pemberton Boulevard would be permissible use of bond proceeds under statute. Harris, Oct. 24, 1990, A.G. Op. #90-0829.

Taxes levied for the Mississippi Gulf Coast Community College Maintenance and Capital Funds and taxes levied for the Child Development Center are not county funds and, thus, are not available for pledging to fund the debt service resulting from a redevelopment plan. McAdams, March 31, 2000, A.G. Op. #2000-0168.

A county may use public funds to provide infrastructure to a proposed gaming project to the same extent that such services and infrastructure are legally provided to other members of the general public. Smith, July 30, 2004, A.G. Op. 04-0066.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 510-552, 567, 572, 585.

64 Am. Jur. 2d, Public Securities and Obligations §§ 50-85.

CJS. 62 C.J.S., Municipal Corporations §§ 1278-1781, 2016-2518.

§ 21-45-3. Definitions.

For the purposes of this chapter, the following terms shall have the meanings given them in this section unless a different meaning is clearly indicated by the context:

(a) "Project area" includes:

(i) Areas in which there is a significant amount of buildings or improvements which, by reason of dilapidation, deterioration, age, obsolescence, inadequate provision for ventilation, light, air, sanitation or open spaces, high density of population and overcrowding or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, are conducive to ill health, transmission of disease, infant mortality, juvenile delinquency or crime and are detrimental to the public health, safety, morals or welfare;

(ii) Areas in which are located a building or buildings that are of important value for purposes of historical preservation, as designated by the Department of Archives and History;

(iii) Areas which by reason of a significant amount of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site improvements, diversity of ownership, tax delinquency, defective or unusual conditions of title, improper subdivision or obsolete platting or the existence of conditions which endanger life or property by fire or other causes, or any combination of such factors, substantially impair or arrest the sound growth of the community, retard the provision of housing accommodations or constitute an economic or social liability and are a menace to the public health, safety, morals or welfare in their present condition and use;

(iv) Areas in which the construction, renovation, repair or rehabilitation of property for residential, commercial or other uses is in the public interest; or

(v) A project for which a certificate of public convenience and necessity has been obtained by the municipality pursuant to the Regional Economic Development Act.

(b) A "redevelopment project" may include any work or undertaking by a municipality:

(i) To acquire project areas or portions thereof, including lands, structures or improvements the acquisition of which is necessary or incidental to the proper clearance, development or redevelopment of such areas or to the prevention of the spread or recurrence of slum conditions or conditions of blight;

(ii) To clear any project areas by demolition or removal of existing buildings, structures, streets, utilities or other improvements thereon and to install, construct or reconstruct streets, utilities, bulkheads, boat docks and site improvements essential to the preparation of sites for uses in accordance with the redevelopment plan and public improvements to encourage private redevelopment in accordance with the redevelopment plan; or

(iii) To sell or lease property acquired by a municipality as part of a redevelopment project for not less than its fair value for uses in accordance with such redevelopment plan to retain property or public improvements for public use in accordance with the redevelopment plan.

"Redevelopment project" may also include the preparation of a redevelopment plan, the planning, survey and other work incident to a redevelopment project and the preparation of all plans and arrangements for carrying out a redevelopment project, relocation of businesses and families required under applicable law, and upon a determination, by resolution of the governing body of the municipality in which such land is located, that the acquisition and development of additional real property not within a project area is essential to the proper clearance or redevelopment of a project area or a necessary part of the general slum clearance program of the municipality, the acquisition, planning, preparation for development or disposal of such land shall constitute a redevelopment project.

(c) "Redevelopment plan" means a plan for the acquisition, clearance, reconstruction, rehabilitation or future use of a redevelopment project area which shall be sufficiently complete:

(i) To indicate its relationship to definite local objectives as to appropriate land uses and improved traffic, public transportation, public utilities, recreational, residential, commercial and community facilities and other public improvements; and

(ii) To indicate proposed land uses, waterfront uses, if any, and building requirements in the area.

A redevelopment plan may include interlocal cooperation agreements between a municipality and a county whereby both agree to pledge revenues payable to them to fund the debt of service of any indebtedness incurred pursuant to this chapter.

(d) "Governing body" means the governing body of any municipality or the board of supervisors of any county.

(e) "Developer" means any person, firm, corporation, partnership or other entity which enters into an agreement with a municipality whereby the developer agrees to construct, operate and maintain or procure the construction, operation and maintenance of buildings or other facilities or improvements upon land or waterfront being a part of a redevelopment project.

(f) "Municipality" means any city or town incorporated under the laws of the State of Mississippi or any county.

(g) "Clerk" means the municipal clerk or chancery clerk, as the case may be.

SOURCES: Laws, 1986, ch. 449, § 2; Laws, 1993, ch. 494, § 1; Laws, 2000, 2nd Ex Sess, ch. 1, § 21, eff from and after passage (approved Aug. 30, 2000.)

Editor's Note — Laws of 2000, 2nd Ex Sess, ch. 1, § 1 provides:
"SECTION 1. This act may be cited as the 'Advantage Mississippi Initiative.'"

Cross References — Regional Economic Development Act, see §§ 57-64-1 et seq.

ATTORNEY GENERAL OPINIONS

Municipalities may, but are not required, to use the proceeds from bonds issued under the Tax Increment Financing Act to share in the costs of removing overhead utility and telecommunications lines and placing them underground when moving such lines underground is a component of a "redevelopment project" as defined in this section, and when such lines are located on a publicly owned easement or right-of-way. The question of whether other funding sources could be used to "participate" in the utility line relocations would have to be evaluated on a case by case basis. Mills, June 11, 2004, A.G. Op. 04-0224.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 510-552, 567, 572, 585.

CJS. 62 C.J.S., Municipal Corporations §§ 1278-1781.

§ 21-45-5. Relation to other laws; authority of municipalities to accept financial assistance and to enter into agreements with developers.

This chapter shall be construed as cumulative authority to other existing laws relating to the powers of municipalities to undertake and carry out slum clearance and redevelopment work. Any municipality engaged in slum clearance or redevelopment work through a redevelopment project within the boundaries of the municipality may provide for financing to defray the cost, in whole or in part, of the same as hereinafter provided. Insofar as this chapter is inconsistent with any other law, this chapter shall be controlling.

Any municipality may accept grants or other financial assistance from the state or federal government, or any other entity, to defray the cost, in whole or in part, of any activity consistent with the purposes of this chapter.

Any municipality may enter into agreements with any developer whereby the developer will agree to construct, operate and maintain buildings or other facilities or improvements included within such projects as are provided in a redevelopment plan.

SOURCES: Laws, 1986, ch. 449, § 3; Laws, 1993, ch. 494, § 2, eff from and after passage (approved March 30, 1993).

Cross References — Additional provisions relative to urban renewal, see §§ 43-35-1 et seq.

Additional provisions relative to slum clearance, see §§ 43-35-101 et seq.

Additional provisions relative to off-street parking and business district renewal, see §§ 43-35-201 et seq.

Provisions relative to designation of areas for development and redevelopment, see §§ 43-35-301 et seq.

Additional provisions relative to community development, see §§ 43-35-501 et seq.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 510-552, 567, 572, 585.

CJS. 62 C.J.S., Municipal Corporations §§ 1278-1781.

§ 21-45-7. Division of ad valorem taxes according to tax increment financing plan.

Any redevelopment project may contain a provision that municipal and county ad valorem taxes, if any, levied upon taxable property in a redevelopment project or municipal sales taxes collected within the area, or both, shall be divided according to a tax increment financing plan.

SOURCES: Laws, 1986, ch. 449, § 4; Laws, 1993, ch. 527, § 1, eff from and after July 1, 1993.

Cross References — Assessment of ad valorem taxes generally, see §§ 27-35-1 et seq.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 510-552, 567, 572, 585.

CJS. 62 C.J.S., Municipal Corporations §§ 1278-1781.

§ 21-45-9. Issuance of tax increment bonds; issuance of refunding bonds; agreements with developers.

Any governing body may issue tax increment bonds, the final maturity of which shall not extend beyond thirty (30) years, for the purpose of financing all or a portion of the cost of a redevelopment project within the boundaries of the municipality, funding any reserve which the governing body may deem advisable in connection with the retirement of the proposed indebtedness and funding any other incidental expenses involved in incurring such indebtedness. The debt service of indebtedness incurred pursuant to this section shall be provided from the added increments of municipal and county ad valorem tax revenues or any portion of the sales taxes, or both, to result from any such redevelopment project and shall never constitute an indebtedness of the municipality within the meaning of any state constitutional provision or statutory limitation and shall never constitute nor give rise to a pecuniary liability of the municipality or a charge against its general credit or taxing powers.

Said bonds may be authorized by resolution or resolutions of the governing body, and may be issued in one or more series, may bear such date or dates, mature at such time or times, bear interest at such rate or rates, payable at such times, be in such denominations, be in such form, be registered, be executed in such manner, be payable in such medium of payment, at such place or places, be subject to such terms of redemption, with or without premium, carry such conversion or registration privileges and be declared or become due before the maturity date thereof, as such resolution or resolutions may provide; however, such bonds shall not bear a greater interest rate to maturity than that allowed under Section 75-17-101. Said bonds shall be sold for not less than par value plus accrued interest at public sale in the manner provided by Section 31-19-25 or at private sale, in the discretion of the governing body. The lowest interest rate specified for any bonds issued shall not be less than seventy percent (70%) of the highest interest rate specified for the same bond issue. Said bonds may be repurchased by the municipality out of any available funds at a price not to exceed the principal amount thereof and accrued interest, and all bonds so repurchased shall be cancelled. In connection with the issuance of said bonds, the municipality shall have the power to enter into contracts for rating of the bonds by national rating agencies; obtaining bond insurance or guarantees for such bonds and complying with the terms and conditions of such insurance or guarantees; make provision for payment in advance of maturity at the option of the owner or holder of the bonds; covenant for the security and better marketability of the bonds, including without limitation the establishment of a debt service reserve fund and sinking funds to secure or pay such bonds; and make any other provisions deemed desirable by the municipality in connection with the issuance of said bonds.

If a governing body desires to issue tax increment financing bonds under the Regional Economic Development Act, the governing body also shall comply with any requirements provided therein.

In connection with the issuance of said bonds, the municipality may arrange for lines of credit with any bank, firm or person for the purpose of providing an additional source of repayment for such bonds and amounts drawn on such lines of credit may be evidenced by bonds, notes or other evidences of indebtedness containing such terms and conditions as the municipality may determine; provided, however, that such bonds, notes or evidences of indebtedness shall be secured by and payable from the same sources as are pledged to the payment of said bonds which are additionally secured by such line of credit, and that said bonds, notes or other evidences of indebtedness shall be deemed to be bonds for all purposes of this chapter. Pending the preparation or execution of definitive bonds, interim receipts or certificates, or temporary bonds may be delivered to the purchaser or purchasers of said bonds. Any provision of law to the contrary notwithstanding, any bonds, if any, issued pursuant to this chapter shall possess all of the qualities of negotiable instruments.

The municipality may also issue refunding bonds for the purpose of paying any of its bonds at or prior to maturity or upon acceleration or redemption. Refunding bonds may be issued at such time prior to the maturity or redemption of the refunded bonds as the municipality may determine. The refunding bonds may be issued in sufficient amounts to pay or provide the principal of the bonds being refunded, together with any redemption premium thereon, any interest accrued or to accrue to the date of payment of such bonds, the expenses of issuing the refunding bonds, the expenses of redeeming the bonds being refunded, and such reserves for debt service or other capital or current expenses from the proceeds of such refunding bonds as may be required by any of the municipality's resolutions, trust indenture or other security instruments. The issuance of refunding bonds, the maturities and other details thereof, the security therefor, the rights of the holders and the rights, duties and obligations of the municipality in respect of the same shall be governed by the provisions of this chapter relating to the issuance of bonds other than refunding bonds, insofar as the same may be applicable.

Before incurring any debt pertaining to a redevelopment project incorporating a tax increment financing plan the governing body may, but shall not be required to, secure an agreement from one or more developers obligating such developer or developers:

(a) To effect the completion of all or any portion of the buildings or other facilities or improvements, as described in the redevelopment project, at no cost to the municipality;

(b) To pay all or any portion of the real property taxes due on the project in a timely manner; and

(c) To maintain and operate all or any portion of the buildings or other facilities or improvements of the project in such a manner as to preserve property values.

No breach of any such agreement shall impose any pecuniary liability upon a municipality or any charge upon its general credit or against its taxing powers.

Additionally, the municipality may enter into an agreement with the developer under which the developer may construct all or any part of the redevelopment project with private funds in advance of issuance of the bonds and may be reimbursed by the municipality for actual costs incurred by the developer upon issuance and delivery of the bonds and receipt of the proceeds, conditioned upon dedication of redevelopment project by the developer to the municipality to assure public use and access. This condition shall not apply to the privately owned portion of a project for which the Mississippi Development Authority has issued a certificate of convenience and necessity pursuant to the Regional Economic Development Act. In addition, this condition shall not apply to the privately owned portion of a redevelopment project where the governing body of a municipality makes a finding that it is in the best interest of such municipality that such condition shall not apply.

SOURCES: Laws, 1986, ch. 449, § 5; Laws, 1993, ch. 494, § 3; Laws, 1993, ch. 527, § 2; Laws, 2000, 2nd Ex Sess, ch. 1, § 22; Laws, 2006, ch. 538, § 18; Laws, 2007, ch. 422, § 1, eff from and after passage (approved Mar. 20, 2007.)

Editor's Note — Laws of 2000, 2nd Ex Sess, ch. 1, § 1 provides:

"SECTION 1. This act may be cited as the 'Advantage Mississippi Initiative.'"

Cross References — Additional provisions relative to urban renewal, see §§ 43-35-1 et seq.

Additional provisions relative to slum clearance, see §§ 43-35-101 et seq.

Additional provisions relative to off-street parking and business district renewal, see §§ 43-35-201 et seq.

Provisions relative to designation of areas for development and redevelopment, see §§ 43-35-301 et seq.

Additional provisions relative to community development, see §§ 43-35-501 et seq.

Regional Economic Development Act, see §§ 57-64-1 et seq.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 510-552, 567, 572, 585.

64 Am. Jur. 2d, Public Securities and Obligations §§ 148 et seq.

CJS. 62 C.J.S., Municipal Corporations §§ 1278-1781, 2016-2518.

§ 21-45-11. Contents of tax increment financing plan; public hearing.

Any tax increment financing plan, at a minimum, shall contain:

(a) A statement of the objectives of a municipality with regard to the plan;

(b) A statement indicating the need and proposed use of the tax increment financing plan in relationship to the redevelopment plan;

(c) A statement containing the cost estimates of the redevelopment project and the projected sources of revenue (ad valorem taxes, sales taxes, and the proceeds of any other financial assistance) to be used to meet the costs including estimates of tax increments and the total amount of indebtedness to be incurred;

(d) A list of all real property to be included in the tax increment financing plan;

(e) The duration of the tax increment financing plan's existence;

(f) A statement of the estimated impact of the tax increment financing plan upon the revenues of all taxing jurisdictions in which a redevelopment project is located; and

(g) A statement requiring that a separate fund be established to receive ad valorem taxes and the proceeds of any other financial assistance.

Before approving any tax increment financing plan, the governing body shall hold a public hearing thereon after published notice in a newspaper in which the municipality is authorized to publish legal notices at least once and not less than ten (10) days and not more than twenty (20) days prior to the hearing.

SOURCES: Laws, 1986, ch. 449, § 6; Laws, 1993, ch. 527, § 3, eff from and after July 1, 1993.

Cross References — Additional provisions relative to urban renewal, see §§ 43-35-1 et seq.

Additional provisions relative to slum clearance, see §§ 43-35-101 et seq.

Additional provisions relative to off-street parking and business district renewal, see §§ 43-35-201 et seq.

Provisions relative to designation of areas for development and redevelopment, see §§ 43-35-301 et seq.

Additional provisions relative to community development, see §§ 43-35-501 et seq.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 510-552, 567, 572, 585.

CJS. 62 C.J.S., Municipal Corporations §§ 1278-1781.

§ 21-45-13. Security for principal, interest, and premium on tax increment bond.

The principal, interest and premium, if any, on any tax increment bond shall be secured by a pledge of the revenues payable to the municipality pursuant to the tax increment financing plan and may also be secured, in the discretion of the municipality, by a lien on all or any part of the redevelopment project and any security by any developer pursuant to and secured by a security agreement. The proceedings under which any indebtedness is authorized or any security agreement may contain any agreement or provisions customarily contained in instruments securing such obligations, without limiting the generality of the foregoing provisions respecting the construction, maintenance and operation of buildings or other facilities or improvements of the project, the creation and maintenance of special funds, the rights and remedies available in the event of default to the debt holders or to the trustee, all as the governing body shall deem advisable; provided, however, that in making any such agreements or provisions, no municipality shall have the power to obligate itself except with respect to:

(a) The proceeds of the bonds and any property purchased with the proceeds of the bonds;

(b) Any security pledged, mortgaged or otherwise made available by a developer for the securing of bonds or other indebtedness; and

(c) No municipality shall have the power to obligate itself except with respect to the application of the revenues from the tax increments; nor shall any municipality have the power to incur a pecuniary liability or charge upon its general credit or against its taxing powers.

Tax increment financing bonds issued under the Regional Economic Development Act also may be secured as provided therein.

The proceedings authorizing any bonds and any security agreement securing bonds may provide that in the event of default in payment of the principal of or interest on such bonds, or in the performance of any agreement contained in such proceedings or security agreement, such payment and performance may be enforced by mandamus or by appointment of a receiver in equity with such powers as may be necessary to enforce the obligations thereof. No breach of any such agreement shall impose any pecuniary liability upon any municipality or any charge upon its general credit or against its taxing powers.

The trustee under any security agreement or any depository specified by such security agreement may be such persons or corporation as the governing body shall designate; provided, that they may be residents of Mississippi or nonresidents of Mississippi or incorporated under the laws of the United States or the laws of other states of the United States.

SOURCES: Laws, 1986, ch. 449, § 7; Laws, 1993, ch. 527, § 4; Laws, 2000, 2nd Ex Sess, ch. 1, § 23, eff from and after passage (approved Aug. 30, 2000.)

Editor's Note — Laws of 2000, 2nd Ex Sess, ch. 1, § 1 provides:
"SECTION 1. This act may be cited as the 'Advantage Mississippi Initiative.'"
Cross References — Regional Economic Development Act, see §§ 57-64-1 et seq.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations § 159.

CJS. 62 C.J.S., Municipal Corporations §§ 2016-2518.

§ 21-45-15. Application of proceeds from sale of bonds.

The proceeds from the sale of any bonds issued under authority of this chapter shall be applied only for the purpose for which the bonds were issued; provided, however, that any premium and accrued interest received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold; and provided further, that if for the purpose for which the bonds were issued, such unneeded portion of the proceeds shall be applied to the payment of the principal of or the interest on the bonds.

SOURCES: Laws, 1986, ch. 449, § 8, eff from and after July 1, 1986.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 510-552, 567, 572, 585.

64 Am. Jur. 2d, Public Securities and Obligations §§ 86-96, 99-103, 114-123.

CJS. 62 C.J.S., Municipal Corporations §§ 1278-1781, 2016-2518.

§ 21-45-17. Exemption from taxation.

The bonds authorized by this chapter and the income therefrom and all security agreements and mortgages executed as security therefor made pursuant to the provisions hereof, and the revenues derived therefrom, shall be exempt from all income taxation in the state.

SOURCES: Laws, 1986, ch. 449, § 9, eff from and after July 1, 1986.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 510-552, 567, 572, 585.

CJS. 62 C.J.S., Municipal Corporations §§ 1278-1781, 2016-2518.

§ 21-45-19. Items which are included in cost of redevelopment project.

The cost of a redevelopment project shall be deemed to include the actual cost of the construction or rehabilitation of any part of a project which may be constructed or rehabilitated by a municipality, including architects' and engineers' fees, the purchase price of any real property that may be acquired by a municipality by purchase, all expenses in connection with the authorization, sale and issuance of bonds or other indebtedness to finance such acquisition, and the interest on bonds for a reasonable time prior to construction or rehabilitation, during construction or rehabilitation and for not exceeding one (1) year after completion of the construction or rehabilitation.

SOURCES: Laws, 1986, ch. 449, § 10; Laws, 1993, ch. 527, § 5, eff from and after July 1, 1993.

Cross References — Additional provisions relative to urban renewal, see §§ 43-35-1 et seq.

Additional provisions relative to slum clearance, see §§ 43-35-101 et seq.

Additional provisions relative to off-street parking and business district renewal, see §§ 43-35-201 et seq.

Provisions relative to designation of areas for development and redevelopment, see §§ 43-35-301 et seq.

Additional provisions relative to community development, see §§ 43-35-501 et seq.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 510-552, 567, 572, 585.

64 Am. Jur. 2d, Public Securities and Obligations §§ 86-96, 99-103, 114-123.

CJS. 62 C.J.S., Municipal Corporations §§ 1278-1781, 2016-2518.

§ 21-45-21. Assessment of value of real property described in tax increment financing plan; retention and distribution of captured assessed value; approval of redevelopment plan; certification of amount of sales tax collected.

(1) After adoption of a redevelopment plan containing a tax increment financing plan the clerk shall certify the assessed value of the real property,

including personal property located thereon, described in the tax increment financing plan. Property taxable at the time of the certification shall be included in the assessed value at its most recently determined valuation.

Property exempt from taxation at the time of the request shall be included at zero unless it was taxable when the tax increment financing plan was approved, in which case its most recently determined assessed valuation before it became exempt shall be included. These assessed values shall be, and will be referred to as, the "original assessed value."

(2) Each year thereafter, the clerk and the State Tax Commission, if applicable, shall certify the amount by which the assessed value of real property, including personal property located thereon, described in the tax increment financing plan has increased or decreased from the original assessed value. These assessed values shall be, and will be referred to as, the "current assessed value."

(3) Any amount by which the current assessed value of the real property, including personal property located thereon, described in the redevelopment plan exceeds the original assessed value shall be referred to as the "captured assessed value." The clerk shall certify the amount of the captured assessed value to the municipality each year for the duration of the tax increment financing plan. A municipality may choose to retain all or a portion of the captured assessed value for purposes of tax increment financing if the plan provides that all or a portion of the captured assessed value is necessary to finance the redevelopment project, including the cost of establishing necessary reserves to insure payment of revenue bonds.

If the tax increment financing plan provides that only a portion of the captured assessed value is necessary to finance the redevelopment program, only that portion shall be set aside and the remainder shall be apportioned to the various municipal tax levy funds and the various county tax levy funds.

The amount of captured assessed value that a municipality intends to use for purposes of tax increment financing must be clearly stated in the tax increment financing plan.

(4) After adoption of a redevelopment plan containing a tax increment financing plan which includes a portion of the municipality sales tax diversion, the State Tax Commission shall certify the amount of sales tax collected by the state within the boundaries of the redevelopment area and diverted to the municipality in the twelve-month period ending on the last day of the month before the effective date of approval of the plan. Any increase in the amount collected within the boundaries shall be set aside by the municipality in the fund created by the tax increment financing plan.

Each redevelopment plan shall be approved in the same manner and at the same times provided in Section 43-35-13 for the approval of urban renewal plans. Any tax increment financing plan shall become effective on the same date as the redevelopment plan is approved.

SOURCES: Laws, 1986, ch. 449, § 11; Laws, 1993, ch. 494, § 4; Laws, 1993, ch. 527, § 6; Laws, 1994, ch. 352, § 1, eff from and after July 1, 1994.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Additional provisions relative to urban renewal, see §§ 43-35-1 et seq.

Additional provisions relative to slum clearance, see §§ 43-35-101 et seq.

Additional provisions relative to off-street parking and business district renewal, see §§ 43-35-201 et seq.

Provisions relative to designation of areas for development and redevelopment, see §§ 43-35-301 et seq.

Additional provisions relative to community development, see §§ 43-35-501 et seq.

RESEARCH REFERENCES

Am Jur. 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 510-552, 567, 572, 585.

CJS. 62 C.J.S., Municipal Corporations §§ 1278-1781.

CHAPTER 47

Delta Natural Gas District

SEC.
21-47-1. Use of surplus funds from operation of systems.
21-47-3. Use of funds, generally.
21-47-5. Sale of district's assets to public utility; purchase price.

§ 21-47-1. Use of surplus funds from operation of systems.

The Delta Natural Gas District of Humphreys and Sunflower Counties having acquired certain funds from the operation of its systems is hereby authorized, in its discretion, to use surplus funds for further development of the district and to distribute a portion thereof to the City of Inverness, Town of Isola and the City of Belzoni, which municipalities compose the district.

SOURCES: Laws, 1988, ch. 455, § 1, eff from and after passage (approved April 26, 1988).

§ 21-47-3. Use of funds, generally.

The Delta Natural Gas District shall devote all monies, derived from any source other than the issuance of bonds for purposes authorized by the laws of the State of Mississippi, to or for the payment of all operating expenses, including such items as are normally required of utilities for sales development; to or for the payment of all bonds and interest on outstanding revenue bonds, if any, of such systems; to or for the acquisition and improvement of the system contingencies; to or for the payment of all other obligations incurred in the operation and maintenance of the systems and the furnishing of service; to or for the creation and maintenance of a cash working fund or a surplus fund to be used for replacement, extension of systems and emergencies. The balance of the revenues of the systems, as such may be determined by the directors of the district may be used for any other lawful district purpose or may be paid to the governing authorities of the municipalities of Inverness, Isola and Belzoni, in the proportion determined by vote of the directors of the district for distribution by the municipalities to the various municipal funds and used by each municipality for any municipal purpose authorized by law.

SOURCES: Laws, 1988, ch. 455, § 2, eff from and after passage (approved April 26, 1988).

Cross References — Use of deposits from sale of the district's assets, see § 21-47-5.

§ 21-47-5. Sale of district's assets to public utility; purchase price.

The district shall be authorized to convey the assets of the district to any suitable public utility qualified to operate same, authorized for such service by the State of Mississippi, and regulated by the regulatory agencies of the State of Mississippi. The sale price shall be such as shall be agreed upon between the district and the purchasing utility. The purchase price shall be used as follows:

(a) First, the retirement of all bonds of the district.

(b) The payment of all debts or obligations of the district.

(c) The balance shall be deposited in banks or other financial institutions authorized to receive deposits of such funds by the laws of the State of Mississippi. Such deposits shall be made in accordance with, and shall be secured as required by, the laws of the State of Mississippi. Preference may be given to such institutions as may be located within the counties of Humphreys or Sunflower. Such deposit or deposits, and interest thereon, may be used as set out in Section 21-47-3.

SOURCES: Laws, 1988, ch. 455, § 3, eff from and after passage (approved April 26, 1988).

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